

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

2. Once the problem is identified, the next step is to define the objectives and goals of the project. This helps to clarify what needs to be achieved and provides a clear direction for the team.

3. The third step is to develop a plan or strategy to address the problem. This involves breaking down the problem into smaller, manageable tasks and determining the resources needed to complete them.

4. The fourth step is to implement the plan. This involves putting the strategy into action and monitoring progress regularly to ensure that the project is on track.

5. Finally, the fifth step is to evaluate the results of the project. This involves assessing the outcomes against the objectives and goals to determine the effectiveness of the intervention.



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THE  
LAW OF BUSINESS PAPER  
AND  
SECURITIES

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**A Treatment of the Uniform Negotiable Instruments Act for  
the Lawyer, the Student and the Business Man, With Ex-  
planations of the Law and Citations to Decisions  
Interpreting the Act and Others Upon  
Which Its Provisions Were Based**

TOGETHER WITH

**A Brief Synopsis of the Law of Collections and of the Acts  
Governing Bills of Lading, Warehouse Receipts  
and the Transfer of Certificates of Stock.**

---

BY CHARLES F. DOLLE  
(Of the Cincinnati <sup>U</sup>Bar)

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1920

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## PREFACE.

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I have sought, in the following pages, to set out in concise form a simple and, as far as the nature of the subjects would permit, a non-technical treatment of the Uniform Acts which govern our business instruments. Men occupied in business and in finance may find it interesting and useful.

The book is offered to business men and to young men getting an education in business and in the law, and to lawyers too, although the members of the bar already have at their disposal technical works upon the same subjects written by eminent authors.

Perhaps I should have resisted more strongly, and even declined altogether, the request of the publishers to address this volume to lawyers as well as to business men and to young men getting a business education and an education in the law, if I had not read a statement by the author of a treatise on the law of commercial paper that his three large volumes on this subject might never have been written if the Uniform Negotiable Instruments Law had been enacted before their publication. This is a tribute to the authors of the Act which surely justifies the unselfish labor spent by them in reducing to a few pages the law of more than ten thousand cases.

I shall not hope that the specialist, or even the mature lawyer, will find of much benefit the explanations I have offered at each section of the Act. These may be unnecessary to his understanding of the law. But he will find in them many cross-references that will help him to visualize at one time all of its provisions (some in widely separated sections), upon any question into which he may be inquiring, and if he will read the book he may not find it uninteresting.

For the student and the business man without training in the law, the explanations will be an aid. They will help him to better understand the Act, although I frankly confess that it has sometimes seemed futile and quite unnecessary to try to explain its already clearly expressed provisions. He will find these explanations stated in a narrative-expository style that is designed to hold his interest and in language more simple than is customarily used in the treatment of technical subjects.

For study use the book will present fewer difficulties and distractions than are commonly met with when the subjects are pursued by the case method, or in a book wholly designed for men already learned in the law.

The plan of the book, its arrangement and its scope are stated in the historical and introductory chapters at the beginning of each of the two main Divisions of the Uniform Negotiable Instruments Law, and it will be profitable to read these before engaging upon the study of the sections of the Act which follow them.

The Uniform Negotiable Instruments Law which forms the main subject of the book, is now effective in all of the States. The book is therefore adaptable to all, such changes as have been made by any of them being shown by marginal references and given in full in the Appendix. A merely synoptical treatment of the other subjects is given, it is not offered as anything more.

CHARLES F. DOLLE.

Cincinnati, April 17, 1920.



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# HISTORICAL

AND

## INTRODUCTORY.

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If there is one branch of the law with which the lawyer and the business man ought to make himself familiar it is that upon the subject of commercial paper. To know all the law is not the province of any man, not even the lawyer, but every man ought to be familiar with the rules which govern the use of his business instruments and the rights and duties of the parties upon this kind of paper. We are all called upon to sign our names to promissory notes, bills of exchange and checks, and it is very much worth while to know by what laws our rights and our duties in respect to these are fixed. When we know where we stand in regard to the negotiable instruments which we sign and give out or which we receive in the course of our trade transactions we enjoy a sense of security which it is agreeable to feel, and this book is intended to be an aid to that useful knowledge.

Every negotiable promissory note, check, or draft, which we issue or indorse is really a promise to perform an obligation to the person to whom we give it and to all others to whom it may be assigned. Commercial paper is the medium by which we settle most of our business transactions and the fundamental principles upon which its negotiable character rests are alike all over the world. It is by reason of its negotiability that it has come to be so extensively used in place of actual money as the means of settling our business obligations.

**Meaning of negotiability.** Negotiability means not only that the note, check, or bill of exchange which we issue may be assigned by one person to another by delivery or indorsement, but it also means that the transferee who becomes the holder of the instrument so transferred will take it free from defenses available to the original and to prior parties among themselves, may sue upon it in his own name, and that his rights, and the rights and obligations of all parties whose names are upon the instrument, will be determined and enforced according to the well established rules of the Law Merchant. The Law Merchant is a branch of the Common Law comprising all those principles and rules of mercantile transactions, not alone concerning commercial paper, but the equally well established rules of Factorage, Brokerage and, in part, of Insurance, which have been in immemorial use and have thereby become universally established and recognized as binding custom and, by sanction of the courts, obtained the force of law.

**Chancellor Kent's definition of the law merchant.** The unwritten customs of merchants have been defined by Chancellor Kent in his "Commentaries" on the law, quoting from Lord Mansfield, as "a system of law which does not rest essentially on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade, which general convenience and a common sense of justice have established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world."

Writers agree that the earliest history of the customs of merchants is obscure. The use of Bills of Exchange, which had their commercial origin in this branch of the

law, and were the first form of commercial paper to be used, cannot be traced to its beginning, but perhaps bills are of such antiquity that they were first introduced by that merchant said to be mentioned by Isocrates (400 B. C.) who came to Athens with cargoes of corn and gave an order upon a banker in a town upon the Euxine with whom he had a credit. It is said of Cicero, three hundred years later, that he paid the tuition of his son at Athens by an order from a merchant in Rome drawn upon his debtor in the Greek city and perhaps we may believe that in his time (100 B. C.) bills of exchange, the earliest form of commercial paper, first came into use as a means of making credits available for the payment of the obligations of merchants and traders residing in different distant cities. It would indeed be interesting to know their very first use, but however and whenever that may have been the idea proved too good to be lost and, accordingly, at the end of the twelfth century they were well established among the merchants of Italy. Then, as now and always, convenience and safety in the transportation and transfer of money inspired their use. Bills later came to be used in France and from thence were introduced into England where their earliest recorded use, so far as may be found in the reports of early cases, is in one decided in 1603. They were not at that time employed in England by merchants in their domestic transactions, but their use seems to have been confined to foreign bills drawn by or on foreign merchants. Later, bills drawn by domestic merchants and finally, still later, bills drawn by or upon persons not merchants or traders came to be governed by the already well understood and well established rules of the customs of merchants upon which all negotiable instruments codes, and all decisions



upon the subject, have since been based. At an early period it was disputed in England whether or not the rules of the law merchant applied to promissory notes as well as to bills of exchange but the negotiability of the former was afterward, in 1705, settled by statute. These customs of merchants and mariners based, you will observe, upon the general convenience and a common sense of justice, and recognized as law more than seven centuries ago, have since become the public law of every civilized country in the world.

**Earliest codifications of the law merchant.**

The French were the first to systematically arrange the rules of the Law Merchant,

in so far as they relate to commercial paper and, in the 17th Century, codified them in what was known as "The Commercial Code of France." This Code, it is said, formed the basis of all continental codes. Later they were collected and codified in Spain, in 1829, and in Germany in 1848. No general codification took place in England until 1882. In the United States there had been no attempt to codify the laws relating to commercial paper as established by usage, until 1872 when California did so, in a way, in its "Civil Code" adopted that year.

**The need for codification in England and the United States and the British B. of E. act.**

Prior to 1882, in England and in all the United States, with the exception of California, the law upon the subject of commercial paper consisted in part of statutory enactment, but more largely of judicial decisions interpreting the established customs of the banking and business communities. Up to that time there had not been, with the exception referred to, any codification of these decisions and established rules into written, enacted law in either country. Of course, in this state of the law, varying inter-

pretations of many of the important rules of the law merchant confronted the lawyer in England and in our own country, more particularly in the United States, where there were then, as now, about fifty courts of final resort. Bewildering complications and contradictions resulted from their conflicting decisions and the solution of the perplexing problems which arose out of contradictory interpretation of this branch of business law involved, for the lawyer, the laborious examination of a multitude of decisions seldom, even then, providing a clear and uniform rule for the interpretation of the rights and duties of parties to commercial paper, and presented to the business man justifiable occasion for dispute and litigation.

In England the need for codification was met by the enactment by Parliament in 1882 of the "Bills of Exchange Act" and this became the first general codification of the laws relating to commercial paper in any of the English speaking countries. It was designed to codify, as nearly as possible, all the existing law upon the subject in that country. That Act is thoroughly comprehensive and covers the entire field of commercial paper.

Our uniform negotiable instruments law.

Since our system of law is based upon the jurisprudence of England it was, of course, a very logical consequence that upon this important subject the business community of our own country looked for guidance to the codification of the law merchant in Great Britain when the need for revision was proposed at the annual conference of the Commissioners on Uniform State Laws at their meeting in 1895. In that year, in response to this very general need and urgent demand, which had already engaged the earnest attention of the Uniform Laws Committee of the

American Bankers' Association, the annual conference of the Commissioners on Uniform State Laws appointed a committee to draft an act which would meet our business needs. The committee to which this work was intrusted was instructed to prepare a bill to be based upon the British Act which had then been in use for nearly fourteen years. This committee was not limited, however, to the consideration of that Act alone but it was instructed to prepare and present a report which should have regard also to information to be obtained from whatever other source it might see fit to consult. Therefore, while the British Act forms the basis of our Uniform Negotiable Instruments Law, and while the continental codes were all consulted by its authors, the committee, nevertheless, did not hesitate to depart from any prior acts whenever they were found to be in conflict with the settled law of this country.

There is a marked difference in the forms of the British Act and our own, due very probably to the more common use of bills of exchange in England than in the United States. This difference, is, however, mainly in the structure of the law our own Act being equally as comprehensive as the British Act, and amply providing for an equally general use of bills of exchange in our domestic and foreign commerce, which we shall presently see when what seems to be the real business purpose of our new currency legislation is fully taken advantage of by the banks and merchants of this country. Bills are expected then to exercise the same influence upon the movement of trade and the investment of funds in this country as they now do in the countries of Europe where they are so extensively employed. Discounts will in all probability greatly increase and since it is expected that accounts will become available discount items by means



of time acceptances in lieu of, or as an addition to the present method of obtaining credit by promissory notes, which prevails in most parts of this country, there seems now to be even greater reason than ever before that men engaged in business, and those seeking a business education, shall make themselves familiar with the law upon the subject of commercial paper and that the lawyer shall have a ready means of reference to the statute when his aid is sought.

The committee to which the work of drafting a suitable act was intrusted prepared and submitted to the Commission at the next Conference in Saratoga, N. Y., held there in 1896, a draft of what is now known as the Uniform Negotiable Instruments Law. After some amendments had been made by the Conference, most of which, the author of the Act says, were such changes in the existing law as he had not felt at liberty to incorporate in his draft of the proposed bill, the Act was agreed upon and prepared for submission to the legislatures of all the States with the recommendation of the Conference for its adoption. At this Conference representatives of fourteen States were present and participated. Its committee had the assistance of an able expert upon the law of commercial paper and during the year of its preparation the draft of the proposed Act was submitted to many of the most eminent American and English authorities upon the subject for their approval and criticism. It was later submitted to the members of the committee on Uniform Laws of the American Bankers' Association who, deeming the Act so complete and satisfactory and so much better than any which it could frame, reported it favorably and recommended to the State Associations that they present the Uniform Act to their respective state legislatures and urge its adoption in all the States.

**States in which it is in effect.** Its adoption proceeded slowly but now, after twenty-one years, the statute has been enacted in every State but Georgia and Texas and in the District of Columbia, Hawaii, Alaska and the Philippine Islands, in most, without change, and in all substantially in the form in which it was recommended by the commission. It is, perhaps, to be regretted the legislatures of some have seen fit to change any of the provisions of this Act. Such small ambiguities, discrepancies or obscurities as might appear in it can better be cleared away by judicial interpretation, and this seems to have been the conclusion of all subsequent Conferences of the commissioners for, though many amendments to the Act have been proposed, none have been adopted by that body. However, in such States as have altered the law in any material respect, the changes will be indicated in this book by marginal notes. These will refer the reader to an Appendix where they will be found.

**Act has controlling effect.** The words of the statute are given controlling effect wherever they are in conflict with the law as it previously existed either by statutory enactment or by judicial interpretation of the common law. The Act was intended to be a code of all the laws relating to the use of commercial paper. Its style and language have been said to be better, in some respects, than the British Act. It is also said to be simpler, less technical and more easily intelligible than that Act, and it has been commended by the courts and by eminent English authority because of these qualities.

**The principal purposes of the act.** The purpose of the Act being to clear up whatever conflict existed in the law of negotiable instruments in this country and to establish certainty and uniformity in their construction and effect in all the States, in order that the

business man may more readily understand his rights and his duties in regard to the commercial paper which he issues or accepts or to which he otherwise becomes a party in the course of his business dealings, the Act will be set forth in this volume with such explanations as might be helpful to him. The arrangement of the book

**The arrangement of the book.** will present each section of the Act in the form in which it is in effect in those States where no changes have been made, following these with the explanations which seem necessary to make it intelligible to the man of ordinary comprehension and by references to related sections. Attention will be directed, as has been said, by marginal notes, to such States as have made changes in the Act and what they are. These will be found to be comparatively few and not seriously to impair its essential characteristic of uniformity.

Citations will be used and these will either illustrate the cases upon which is based the provision in the Act to which they refer, or they will be of cases in which it has been interpreted. The courts of all the States will, of course, be guided by the interpretations of other courts of their own States where they have passed upon the Act, but when they have no precedent decision of their own they will freely accept, with the same authority as their own, the decisions of the courts of other States interpreting identical provisions of this Act. This fortunate disposition toward uniformity in interpretation has made it possible for me to use cases in the citations which aptly well illustrate the conclusions stated in the text, when they are not obviously sustained by the Act itself, without cumbering the volume with the multitude of cumulative decisions that are available and may be found in the various digests of the law.

Although it is applicable to all forms of negotiable instruments, the Act has particular reference to promissory notes, bills of exchange and checks these being the principal forms of commercial paper and the three with which business men most frequently meet in their daily transactions, and perhaps the reader will be enabled to approach, apply and better understand the provisions of the first title of the Act if he is here made familiar with the definition of each of these instruments as it is contained in the law. Accordingly, a negotiable promissory note is defined as follows:

**Definition of promissory note.** “A NEGOTIABLE PROMISSORY NOTE WITH-  
IN THE MEANING OF THIS ACT IS AN UNCON-  
DITIONAL PROMISE IN WRITING MADE BY ONE PERSON TO  
ANOTHER SIGNED BY THE MAKER ENGAGING TO PAY ON DE-  
MAND, OR AT A FIXED OR DETERMINABLE FUTURE TIME, A SUM  
CERTAIN IN MONEY TO ORDER OR TO BEARER. WHERE A NOTE  
IS DRAWN TO THE MAKER'S OWN ORDER, IT IS NOT COMPLETE  
UNTIL INDORSED BY HIM.”

Not all promissory notes are negotiable, and a written promise to pay money or other thing of value may be regarded as a promissory note even if it is not negotiable. Its interpretation, however, and the interpretation of the rights and liabilities of its parties are not governed by this Act if it is not a negotiable instrument. This section contains the definition of a “negotiable promissory note,” and, as it will be seen by reference to Sec. 1 of the Act, the definition incorporates all of the requirements of that section in regard to the form which such an instrument must have in order that it may be considered to be a negotiable promissory note.

The second class of negotiable instruments particularly embraced within the Act is bills of exchange, and these are defined as follows:



**Bill of exchange defined.** “A BILL OF EXCHANGE IS AN UNCONDI-

TIONAL ORDER IN WRITING ADDRESSED BY ONE PERSON TO ANOTHER, SIGNED BY THE PERSON GIVING IT, REQUIRING THE PERSON TO WHOM IT IS ADDRESSED TO PAY ON DEMAND OR AT A FIXED OR DETERMINABLE FUTURE TIME A SUM CERTAIN IN MONEY TO ORDER OR TO BEARER.”

A bill of exchange is more commonly known as a “draft,” “bill,” “acceptance” and “trade acceptance,” the designation newly applied to bills drawn and accepted by merchants in order to distinguish them from “Bankers’ Bills” which are at present used only in transactions growing out of our foreign trade. A bill is usually, though not necessarily, drawn by one person upon another with whom he has a credit or who is indebted to him. It directs the person upon whom it is drawn to pay the money due upon the drawer’s credit, either immediately upon presentment of the instrument or at a future time, to some other person whom he names. When such an order is to be issued certain requisites of form must be observed. These are fixed in this Act and while, as in other negotiable instruments, the Act does not designate the exact language to be used in drawing a bill, the substance of the law must be complied with and is sufficiently so in the forms with which we are all familiar and can readily obtain.

In the introduction to the second title, the provisions of which are applicable to bills of exchange, I have used the occasion to outline the principal business features of the new Federal Reserve Bank Act which was designed to permit and encourage the acceptance business by national banks, and to establish a rediscount market in this country similar to those of the financial centers of Europe, based, to a very large extent, upon bankers’ bills.

The third form of familiar commercial paper to which the law applies is a check, and this is defined in the Act as follows:

**A check defined.** “A CHECK IS A BILL OF EXCHANGE DRAWN ON A BANK PAYABLE ON DEMAND. EXCEPT AS HEREIN OTHERWISE PROVIDED, THE PROVISIONS OF THIS ACT APPLICABLE TO A BILL OF EXCHANGE PAYABLE ON DEMAND APPLY TO A CHECK.”

A check drawn upon a bank is, therefore, considered to be and is in fact a bill of exchange payable upon demand. Every provision of this Act which governs the interpretation and enforcement of the liabilities and rights of parties to a bill of exchange payable upon demand, or at sight, is, by this section, made applicable to a check unless by the Act itself it is otherwise provided. All of its provisions in regard to notice of non-payment and in regard to protest, if the check is upon its face a foreign bill, that is to say, a bill drawn in one State and payable in another, must be complied with.

The manner in which checks and other instruments are handled for collection and some of the duties and responsibilities of banks and collecting agents will be described and explained, with reference to applicable sections of the Act, at the conclusion of the treatment of Title 3.

**Certificates of deposit and bonds.**

Certificates of deposit and bonds and their coupons, being fully negotiable instruments, being in effect, and in fact but promissory notes, while they are not specially treated in the Act or in the explanations, are wholly governed by its provisions. At the beginning of Title 3, a short division of the Act, the provisions of which are applicable to promissory notes and checks, I shall very briefly mention again that their negotiation and interpretation are governed by the Uniform Negotiable Instruments Law and will state a few of the most important provisions of the law by which their use is governed.

**Quasi-negotiable instruments.**

In addition to the three forms of commercial paper mentioned and to certifi-

ates of deposit and bonds and their coupons, which are regulated wholly by the Law Merchant, others, considered as *quasi-negotiable*, that is, having some of the features of negotiable instruments and governed in part by the same or similar laws, are bills of lading, warehouse receipts and certificates of stock.

These are made the subject of other Uniform Acts proposed by the Commissioners on Uniformity of State Laws notably warehouse receipts, and these, in forty-one States, the District of Columbia, Alaska and the Philippine Islands, are now governed by the Uniform Act prepared and recommended by the Commissioners for their interpretation.

Aside from that Act, however, the other Uniform Acts have not yet met with a generous approval from the legislatures of the States. The Bills of Lading Act has been enacted in only twenty-one and the Uniform Stock Transfer Act in only twelve States. The principles of the laws which they are designed to partially codify are, however, interpreted to very much the same effect in nearly all. I shall, therefore, attempt to state these general principles in relation to each under the title "Quasi-Negotiable Instruments."

Being impressed, now, with the real purpose of the Act, namely, to make uniform the law of negotiable instruments in all of the States, in order that the business man may readily know and understand what are, everywhere, his rights and his duties upon his ordinary commercial paper, and repeating that it was prepared and enacted particularly for the benefit of men in business, the reader will, perhaps, with this brief introduction and explanation of its history, be more interested and better prepared to proceed with the examination of the Act itself.

## TITLE I.

### NEGOTIABLE INSTRUMENTS IN GENERAL.

#### SUBDIVISION I.

#### FORM AND INTERPRETATION.

Section	Section
1 Form of negotiable instruments.	13 When date may be inserted.
2 Certainty as to sum—what constitutes.	14 Blanks; when may be filled.
3 When promise is unconditional.	15 Incomplete instrument not delivered.
4 Determinable future time; what constitutes.	16 Delivery; when effectual; when presumed.
4 Additional provisions affecting negotiability.	17 Ambiguous instrument.
6 Omissions; seal; particular money.	18 Liability of persons signing in trade or assumed name.
7 When payable on demand.	19 Signature by agent; authority; how shown.
8 When payable to order.	20 Liability of persons signing as agent, etc.
9 When payable to bearer.	21 Signature by procuration; effect of.
10 Terms—when sufficient.	22 Effect of indorsement of infant or corporation.
11 Date; presumption as to.	23 Forged signature; effect of.
12 Antedated and postdated.	

“SEC. 1. AN INSTRUMENT TO BE NEGOTIABLE MUST CONFORM TO THE FOLLOWING REQUIREMENTS:

**Form of negotiable instrument.** 1. IT MUST BE IN WRITING AND SIGNED BY THE MAKER OR DRAWER;  
<sup>a</sup>Wisconsin.

2. MUST CONTAIN AN UNCONDITIONAL PROMISE OR ORDER TO PAY A SUM CERTAIN IN MONEY;

3. MUST BE PAYABLE ON DEMAND, OR AT A FIXED OR DETERMINABLE FUTURE TIME;

4. MUST BE PAYABLE TO ORDER OR TO BEARER; AND,

5. WHERE THE INSTRUMENT IS ADDRESSED TO A DRAWEE, HE MUST BE NAMED OR OTHERWISE INDICATED THEREIN WITH REASONABLE CERTAINTY.”<sup>a</sup>

The opening section of the law provides what shall be formal requisites of a negotiable instrument. If any are lacking, the instrument, although it may be a valid note



or bill, is not negotiable and its interpretation and the rights and liabilities of its parties are not governed by the Act.<sup>1</sup> Observe that the instrument must, first of all, be in writing and signed by the person who issues it. He must either himself sign it or his name must have been placed upon it by some one whom he has authorized to do it. (Sec. 19.) Writing includes print (Sec. 191) and the instrument may be written in pencil or in ink and the signature made by mark.<sup>2</sup> It may be written or printed on material other than paper or parchment, though unusual forms of material ought to be avoided as raising a suspicion of irregularity.

By "maker" is meant the person who makes and issues a promissory note. By "drawer" is meant the person who makes and issues bill of exchange or draft, or a check and it must, likewise, be signed. Of course, two or more persons may join in making a promissory note or drawing a bill or a check.

The drawer of a check is not the person who presents it at the bank upon which it is issued and draws the money upon it, but is the person who signs and issues it. The second requirement of this section is explained in the next two sections of the Act.

The instrument must be payable in money, except in those States where by other statutes instruments payable in anything besides money are declared to be negotiable.

The third subsection of this section is amplified in sections 4 and 7 and sections 8 and 9 define the terms

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1. Windsor Cement Co. vs. Thompson, 86 Conn. 511.

2. Geary vs. Physic, 5 Barn. & Cress. 234.

Brown vs. Butchers & Drovers Bank, 6 Hill (N. Y.) 443, 41 Am. Dec. 755.

Baker vs. Dening, 8 Adol & Ellis, 94.

Reed vs. Roark, 14 Tex. 329, 65 Am. Dec. 127.

Closson vs. Stearns, 4 Vt. 11, 23 Am. Dec. 245.

“order” and “bearer.” If the instrument is neither expressly payable to “order” or “bearer,” it is not negotiable unless, without the use of these words, negotiability may clearly be inferred from other words employed. (Sec. 10.)

The fifth sub-section requires that the drawee of a draft or bill of exchange, that is, the person, firm or corporation upon whom it is drawn, must be named or described with sufficient certainty and clearness to enable the holder to know to whom and where the bill shall be presented. But if the bill, at its inception, names no drawee but designates a place where it is to be presented for payment, its acceptance by any one at that place will be deemed to be an acknowledgment that he is the person to whom it was intended the bill should be presented and that he was intended as the drawee.<sup>3</sup>

Certainty as to  
sum; what  
constitutes.

“SEC. 2. THE SUM PAYABLE IS A SUM  
CERTAIN WITHIN THE MEANING OF THIS ACT  
ALTHOUGH IT IS TO BE PAID:

1. WITH INTEREST; OR

2. BY STATED INSTALLMENTS; OR

<sup>a</sup>Wyoming, Idaho,  
Iowa, N. Caro-  
lina.

3. BY STATED INSTALLMENTS, WITH A  
PROVISION THAT UPON DEFAULT IN PAYMENT  
OF ANY INSTALLMENT OR OF INTEREST,<sup>a</sup> THE  
WHOLE SHALL BECOME DUE; OR

<sup>b</sup>Nebraska,  
N. Carolina,  
S. Dakota.

4. WITH EXCHANGE, WHETHER AT A FIXED  
RATE OR AT THE CURRENT RATE; OR

5. WITH COSTS OF COLLECTION OR AN ATTORNEY'S FEE, IN  
CASE PAYMENT SHALL NOT BE MADE AT MATURITY.”<sup>b</sup>

When an instrument is payable with interest the sum payable is not an uncertain amount for it can be ascertained with exact certainty what sum is payable upon its maturity. The word “installments” used in this

3. Blackman vs. Lehman, 63 Ala. 547.

Gray vs. Milner, 8 Taunt. 739.

Walton vs. Williams, 44 Ala. 347.

Wheeler vs. Webster, 1 E. D. Smith (N. Y.) 1.

section means, as in ordinary usage, partial payments, and when a bill or note is drawn or given to become payable in this manner the amount and time when each installment is to be paid must be named; therefore, the word "stated" is used, meaning, mentioned in or determinable from the instrument with certainty as to both time and amount.

A negotiable instrument which is payable in stated installments, or in which the interest is payable at stated periods, may contain the provision that if any of these installments or if the interest is not paid when due the whole amount of the instrument shall become payable at once.<sup>4</sup> It may also contain a provision that the person upon whom a bill is drawn must in addition to the amount named in it pay "exchange" which is the premium or charge to be collected by reason of the difference in the value of the same amount of money in different countries, or the disparity in the value of the use of the same amount of money in different parts of the same country.<sup>5</sup> Such an instrument usually has written or printed on its face the words "with exchange" and it may fix a definite rate or state that the "exchange" shall be made at the rate prevailing on the date when it is payable and in that event the words "at the current rate," or words of similar import, are usually employed.

A promissory note or bill of exchange may also contain a provision that if it is not paid when due the person obliged to pay it shall pay attorney's fees and other costs of collection in addition to the sum promised. Such a provision is enforceable unless, as is the case in some

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4. Markey vs. Casey, 108 Mich. 184.  
Hodge vs. Wallace, 129 Wis. 84.  
Bright vs. Offield, 81 Wash. 442.

5. Flagg vs. School Dist., 4 N. D. 30.  
Whittle vs. Fond du Lac Nat'l Bk. (Tex.), 26 S. W. 1106.

States, it is made illegal either by express statute or is held to be so by the courts as in conflict with the laws of usury.<sup>6</sup> In that event, however, the insertion of this provision in the instrument does not destroy its negotiability.<sup>7</sup> If a draft is presented to the drawee which contains any provisions requiring him to pay exchange, costs or fees of any kind, he should, if he is unwilling to pay them, refuse to accept it. If he does accept it, he will be liable to pay a holder for value strictly in accordance with the terms of the bill, unless other laws of that State under which such an acceptance is to be enforced negative any provision on the instrument requiring him to do so.

When an instrument is payable in installments, either of principal or interest, and it contains a provision that upon default in the payment of any all shall become due, and one or more of the installments is past due and unpaid, one who takes it afterward with notice of the default will not be considered to be a holder in due course but he will take the instrument subject to all the rights existing between its original parties.<sup>8</sup> A holder who takes the instrument after a known or apparent default in the payment of any installment is chargeable with notice that the party obliged to pay the instrument may have some good defense available against

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6. *Miller vs. Gardner*, 49 Ia. 235.  
*Tyler vs. Walker*, 101 Tenn. 306.

7. *Miller vs. Kyle*, 85 Ohio St. 186.  
*Oppenheimer vs. Farmers & Merch. Bk.*, 97 Tenn. 19.  
*Montgomery vs. Crossthwaite*, 90 Ala. 553.  
*Stapleton vs. Louisville Bankg. Co.*, 95 Ga. 802.  
*Dorsey vs. Wolff*, 142 Ill., 589.  
*Stoneman vs. Pyle*, 35 Ind. 103.

8. *Hodge vs. Wallace*, 129 Wis. 84.  
*Vette vs. La Barge*, 64 Mo. A. 179.  
*Natl. Bk. of N. A. vs. Kirby*, 108 Mass. 497.  
*Waverly First Natl. Bk. vs. Forsyth*, 67 Minn. 257.



it in the hands of the original payee, and consequently in the hands of any subsequent holder who takes it after any known or apparent default in the payment of an installment of principal or interest.<sup>9</sup> If the instrument does not contain a provision making all installments mature upon default in the payment of any one, or if it is provided that the subsequent installments shall mature at the option of the holder, what I have just said will not apply, and one taking such an instrument under these circumstances will take it in due course, if he takes the instrument before the holder exercises his election,<sup>10</sup> unless he is otherwise disqualified. Also see Sec. 52. Uncertainty in the sum payable will not be imputed when there is an obvious omission or the amount is misspelt.<sup>11</sup>

**When promise is unconditional.** "SEC. 3. AN UNQUALIFIED ORDER OR

PROMISE TO PAY IS UNCONDITIONAL WITHIN THE MEANING OF THIS ACT THOUGH COUPLED WITH:

1. AN INDICATION OF A PARTICULAR FUND OUT OF WHICH REIMBURSEMENT IS TO BE MADE, OR A PARTICULAR ACCOUNT TO BE DEBITED WITH THE AMOUNT; OR

2. A STATEMENT OF THE TRANSACTION WHICH GIVES RISE TO THE INSTRUMENT.

BUT AN ORDER OR PROMISE TO PAY OUT OF PARTICULAR FUND IS NOT UNCONDITIONAL."

This section means that a promise or an order to pay, otherwise unqualified, meets the requirement of subsection 2 of section 1 and is to be considered unconditional, although the instrument contains a reference to a particular fund out of which the person who is to pay it shall reimburse himself.<sup>12</sup> It is also unconditional if it

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9. McCorkle vs. Miller, 64 Mo. A. 153, 156.  
Vette vs. La Barge, 64 Mo. A. 179.

10. Battle Creek Nat. Bk. vs. Dean, 86 Iowa, 656. 53 N. W. 338.  
Morgan vs. U. S., 113 U. S. 476.

11. McCoy vs. Gilmore, 7 Ohio, 268.  
Beardsley vs. Hill, 61 Ill. 354.  
Ohm vs. Yung, 63 Ind. 432.

12. Schmittler vs. Simon, 101 N. Y. 554.

directs the payment to be charged to a particular account. If it contains a "statement," meaning an indication or description of the nature of the transaction which gives rise to, that is, causes the instrument to be made and issued, it is not to be considered a conditional promise or order and its negotiability is not affected by such a statement.<sup>13</sup> But if the instrument is so drawn that it directs or promises the payment to be made out of a particular fund, it is not unconditional and therefore not a negotiable instrument, for its payment then depends upon the sufficiency of the particular fund out of which it is to be paid. Municipal warrants which are so drawn, and all usually are, are therefore not negotiable.<sup>14</sup> An order or promissory note drawn to be so payable would not be governed by the provisions of this Act and the rights and liabilities of parties to such an instrument would not be the same as upon a negotiable bill or note.

Negotiability, however, is not essential to the validity of a bill or note,<sup>15</sup> and while an instrument which is non-negotiable may be transferred from one person to another by indorsement and delivery<sup>16</sup> it is, in the hands of any holder, subject to all of the defenses which the maker or other primary party could interpose to prevent its payment if still in the hands of the original payee.<sup>17</sup> The assignee of such an instrument takes no greater right or title than that of his predecessor. This is not true of

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13. Schmidt vs. Pegg, 172 Mich. 159.

14. Read vs. Buffalo, 67 Barb. (N. Y.) 526.

Beyerque vs. San Francisco, 1 McAll (U. S.) 175, 2 Fed. Cas. No. 1137.

15. Roads vs. Webb, 91 Me. 406, at 410, 41 Atl. 128.

16. Richards vs. Warring, 39 Barb (N. Y.) 42.

17. Warren vs. Scott, 32 Iowa, 22.

Raymond vs. Middleton, 29 Pa. St. 529.

Roads vs. Webb, 91 Maine, 406, at 411.

negotiable instruments and forms their principal distinguishing feature.

**Determinable  
future time;  
what constitutes.  
Wisconsin.**

“SEC. 4. AN INSTRUMENT IS PAYABLE  
AT A DETERMINABLE FUTURE TIME, WITHIN  
THE MEANING OF THIS ACT, WHICH IS EX-  
PRESSED TO BE PAYABLE

1. AT A FIXED PERIOD AFTER DATE OR SIGHT; OR
2. ON OR BEFORE A FIXED OR DETERMINABLE FUTURE TIME  
SPECIFIED THEREIN; OR
3. ON OR AT A FIXED PERIOD AFTER THE OCCURRENCE OF  
A SPECIFIED EVENT, WHICH IS CERTAIN TO HAPPEN, THOUGH  
THE TIME OF HAPPENING IS UNCERTAIN.

“AN INSTRUMENT PAYABLE UPON A CONTINGENCY IS NOT  
NEGOTIABLE, AND THE HAPPENING OF THE EVENT DOES NOT  
CURE THE DEFECT.”

The first sub-section of this section embraces a note or bill payable a certain number of days, months, or years after date or after sight.

The second embraces such as are payable on or before a fixed date, and in this would be included such as may be payable “on or by” a fixed time, the word “by” being regarded as the equivalent of “before.”<sup>18</sup> It also embraces one payable on or before a determinable future time which can be known and determined from the language used in the instrument itself.

The third embraces such as are payable at a fixed period (number of days, months or years, on demand, or at a fixed date) after the happening of a named event which must be certain to happen although the time when it will happen may be uncertain. The most common illustration of an instrument payable after the happening of an event certain to happen is of one payable after the death of a person whom it names but, of course, such certainty as this is not always required. A certificate of deposit, for example, may be made payable “upon re-

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18. Preston vs. Dunham, 52 Ala. 217.  
Massie vs. Belford, 68 Ill. 290.

turn of this certificate'' and this has been held to be sufficiently certain to meet this requirement and not impair its negotiability, these words being the equivalent of a promise to pay "on demand."<sup>19</sup> (See Sec. 17.)

This section also provides that an instrument payable upon a contingency, that is, an uncertainty, is not negotiable, and even though the uncertainty upon which it depends does happen, it does not thereby become negotiable. This so distinctly states the rule that no further explanation seems necessary.<sup>20</sup> Examples are to be found in the cases cited.

"SEC. 5. AN INSTRUMENT WHICH CONTAINS AN ORDER OR PROMISE TO DO ANY ACT IN ADDITION TO THE PAYMENT OF MONEY IS NOT NEGOTIABLE."<sup>a</sup> BUT THE NEGOTIABLE CHARAC-

**Additional provisions not affecting negotiability.**

<sup>a</sup>Illinois.

<sup>b</sup>N. Carolina.

<sup>c</sup>Kentucky.

<sup>d</sup>Wisconsin.

TER OF AN INSTRUMENT OTHERWISE NEGOTIABLE IS NOT AFFECTED BY A PROVISION WHICH—

1. AUTHORIZES THE SALE OF COLLATERAL SECURITIES IN CASE THE INSTRUMENT BE NOT PAID AT MATURITY; OR

2. <sup>b</sup>AUTHORIZES A CONFESSION OF JUDGMENT<sup>a</sup> IF THE INSTRUMENT BE NOT PAID AT

MATURITY; OR

3. <sup>c</sup>WAIVES THE BENEFIT OF ANY LAW INTENDED FOR THE ADVANTAGE OR PROTECTION OF THE OBLIGOR; OR

4. GIVES THE HOLDER AN ELECTION TO REQUIRE SOMETHING TO BE DONE IN LIEU OF PAYMENT OF MONEY.

BUT NOTHING IN THIS SECTION SHALL VALIDATE ANY PROVISION OR STIPULATION OTHERWISE ILLEGAL."<sup>d</sup>

The first paragraph of this section is readily understood and, except as it may be otherwise provided in the Act, an instrument which requires the maker or acceptor to perform some act in addition to the payment of money cannot be negotiated in the sense in which that term is used in the Act. Such an instrument would have merely

19. Citizens Bank vs. Brown, 45 O. S. 39.  
Miller vs. Austin, 13 How. (U. S.) 218.

20. Hibernia Bk. & Tr. Co. vs. Dresser, 132 La. 532.  
Tisdale Lbr. Co. vs. Piquet, 153 App. Div. (N. Y.) 266.



the force and legal effect of a simple contract, would be interpreted under the rules of law which apply to simple contractual relations, and would be assignable as such.<sup>21</sup> There are, however, four exceptions given to this rule which are declared not to affect the negotiability of the instrument and either or all of these may appear in it without destroying its negotiable character.

The first is usually found in that form of promissory note used when a loan is made upon collateral, such as stocks, bonds, etc., which are pledged to secure it. In such an instrument the holder is given power to sell the security pledged. The negotiability of such an instrument will not be impaired by a provision requiring additional collateral or authorizing the surrender of the whole or part of the pledge upon the complete or partial performance of the promise,<sup>22</sup> but a provision in a mortgage note accelerating its maturity if the mortgagor shall do anything to impair the security of the pledge will destroy its negotiability.<sup>23</sup>

The second is of instruments which authorize some one to admit the maker's indebtedness and confess judgment upon the obligation if it is not paid at maturity. The instrument may not, however, contain a provision authorizing the confession of judgment before maturity for such a provision would destroy its negotiability.<sup>24</sup> A promissory note of this kind usually contains a waiver of notice and of other benefits which the maker would otherwise be entitled to enjoy and the third sub-section

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21. *Reed vs. Murphy*, 1 Ga. 236.

22. *Kennedy vs. Broderick*, 216 Fed. 137. 166 C. C. A. 381.

*Finley vs. Smith*, 165 Ky. 445.

*Isley vs. Smedes*, 15 Daly (N. Y.) 488, 8 N. Y. Suppl. 470,  
29 N. Y. St. 417.

*Gross vs. Emerson*, 23 N. H. 38.

23. *Bright vs. Offield*, 81 Wash. 442.

24. *Wis. Yearly Meetg. of F. Baptists vs. Babler*, 115 Wisc. 289.  
*First Nat'l Bank, Elgin. vs. Russell*, 124 Tenn. 618.

provides that this waiver, as well as a waiver of any of his other rights and benefits by the person obliged to pay the instrument, secured to him by laws intended for his protection, may be contained in the instrument and, notwithstanding this provision, the instrument will continue to be negotiable.<sup>25</sup>

The fourth means, as it says, that the instrument may be payable in money and provide as well that the holder, who is the person lawfully having it in his possession, may have the election, that is, the choice, of requiring the person obliged to pay it to make payment in money or, in the alternative, to perform some act instead, as, for example, in lieu thereof to deliver certain property or securities, or perform certain services, which must be set forth in the instrument.<sup>26</sup> But, observe, that if the instrument itself contains a direction to the person obliged to pay it or contains his promise to do any act in addition to the payment of money, it is not negotiable. Another section of the Act (Sec. 132) provides that the acceptance of a bill of exchange may not express that the drawee will perform his promise by any other means than the payment of money. Yet, the negotiability of the instrument would not be affected by an acceptance which agrees to pay the instrument in money but provides also that the holder may, at his election, require something to be done instead.

If, however, the instrument contains any illegal provision, or stipulation, such a provision or stipulation is not made lawful by this section. There are in all States laws which define what are illegal acts and this section is not intended to make legal any which would otherwise be unlawful. What are unlawful provisions differ in the

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25. *Hughitt vs. Johnson*, 28 Fed. 865.

26. *Hostetter vs. Wilson*, 36 Barb. (N. Y.) 307.

several States and to know them the statutes of each State must be examined. Very generally stated they are such as violate positive law, the laws of religion or morality or such as are distinctly opposed to public policy.

**Omissions; seal; particular money.** "SEC. 6. THE VALIDITY AND NEGOTIABLE CHARACTER OF AN INSTRUMENT ARE NOT AFFECTED BY THE FACT THAT—

- Illinois.**
1. IT IS NOT DATED; OR
  2. DOES NOT SPECIFY THE VALUE GIVEN, OR THAT ANY VALUE HAS BEEN GIVEN THEREFOR; OR
  3. DOES NOT SPECIFY THE PLACE WHERE IT IS DRAWN OR THE PLACE WHERE IT IS PAYABLE; OR
  4. BEARS A SEAL; OR
  5. "DESIGNATES A PARTICULAR KIND OF CURRENT MONEY IN WHICH PAYMENT IS TO BE MADE.

BUT NOTHING IN THIS SECTION SHALL ALTER OR REPEAL ANY STATUTE REQUIRING IN CERTAIN CASES THE NATURE OF THE CONSIDERATION TO BE STATED IN THE INSTRUMENT."

The negotiable character of an instrument, otherwise negotiable, is not destroyed nor is its negotiability affected by the fact that it is not dated or that the words "value" or "value received" are omitted or it does not specify what value was given for it. Nor is a note or a bill bearing a seal thereby rendered the less negotiable. An investment bond of a municipal or other corporation bearing a seal is negotiable, as are its interest coupons. (See Sec. 184.)

The instrument is negotiable if it does not appear to have been drawn or made payable at any specified place. Such an instrument is deemed to have been drawn at the place where it is issued and if no place of payment is named, it is payable at the given address of the person who is to pay it; and if this has also been omitted then at his residence or place of business. (Sec. 73.)

A promissory note, bill of exchange, or other negotiable instrument may designate payment to be made

in a particular kind of money in common and general use at the place where it is payable, and receivable and passing by law as money, without destroying or affecting its negotiability.<sup>27</sup> In some of the States there are laws requiring that in certain cases the nature of the consideration must be expressed in the instrument, as, in certain States, that a note given for some kinds of cropping seeds must so state, and this section is not intended to alter or repeal such laws. Therefore it is provided generally that if the nature of the consideration upon which it is based is expressed in the instrument its negotiability is not affected by such a provision.

**When payable on demand.**

“SEC. 7. AN INSTRUMENT IS PAYABLE ON DEMAND—

1. WHERE IT IS EXPRESSED TO BE PAYABLE ON DEMAND, OR AT SIGHT, OR ON PRESENTATION; OR

2. IN WHICH NO TIME FOR PAYMENT IS EXPRESSED.

WHERE AN INSTRUMENT IS ISSUED, ACCEPTED, OR INDORSED WHEN OVERDUE, IT IS, AS REGARDS THE PERSON SO ISSUING, ACCEPTING OR INDORSING IT, PAYABLE ON DEMAND.”

A promissory note which by its terms is payable upon demand, or a draft or bill of exchange payable at sight or upon presentation, or a note or other negotiable instrument in which no time for payment is fixed, must be paid by the person who is obliged to pay it, whenever the holder presents it to him and demands its payment. And it is so payable even if it is payable with interest and contains a provision that the interest shall be payable annually or at other fixed periods after its date.<sup>28</sup> Such a provision is not regarded as an indication that the holder is not expected to present the instrument for payment until the time at which the interest is payable

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27. Hatch vs. First Nat'l Bank, 94 Me. 348, 80 Am. St. Rep. 401.

28. Meader vs. Dollar Savg. Bk., 56 Ga. 605.

Converse vs. Johnson, 146 Mass. 20, 14 N. E. 925.

Shaw vs. Shaw, 43 N. H. 170.

Knight vs. Braswell, 70 N. C. 709.



and not at all to be understood to require him to withhold demand until that time.

An instrument which is issued, accepted, or which is transferred from one person to another by indorsement after it is past due, is, as to the person so issuing, accepting or indorsing it and, of course, as to all prior parties, payable at once. In order to hold the indorser indorsing such an instrument after maturity the holder must present it for payment within a reasonable time after its negotiation to him, although it has previously been dishonored, and if it is not then paid must give notice of dishonor to his transferer<sup>29</sup> if his liability had not already been fixed by notice upon its previous dishonor.<sup>29a</sup>

The holder of an instrument payable on demand has the right to demand payment immediately after its issue or negotiation to him.<sup>30</sup> He may, if he desires, wait a reasonable time before doing so, but what is a reasonable time is a question which will permit of varying construction (see secs. 53, 71, 144 & 193) and it is proper, if the instrument bears indorsements, to make demand at once unless a delay has been agreed upon, and then proceed as required under Secs. 89 to 118 inclusive. Of course, it is unusual to do this when the instrument is a promissory note but not at all unusual in this country in the case of bills of exchange payable on demand. Indeed, when the instrument is a check, its detention for a very few days without presenting it for payment has been held to be an unreasonable delay.<sup>31</sup> It is not rec-

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29. *Smith vs. Caro & Baum*, 9 Oregon, 278.  
*Colt vs. Barnard*, 18 Pick. 260.  
*Libbey vs. Pierce*, 47 N. H. 309, 314.  
*Beer vs. Clifton*, 98 Cal. 323.

29a. *Libbey vs. Pierce*, 47 N. H. 309, 314.

30. *Merritt vs. Todd*, 23 N. Y. 28.

31. *Nat'l State Bk. vs. Weil*, 141 Pa. St. 457; 21 A. 667.

ommended, however, that immediate demand be made for the payment of a bill or note which has been issued or drawn to be used as a credit instrument.<sup>32</sup>

After demand and notice to the indorsers, the holder may sue upon the instrument at his pleasure and he is limited as to the length of time he may wait before doing so only by the statute of limitations governing such instruments in the State in which they are to be enforced. More will be said upon this subject under the sections above referred to. The maker of a demand note has, of course, the right to pay it at any time after its issue unless a delay has been agreed upon.<sup>33</sup>

**When payable to order.** "SEC. 8. THE INSTRUMENT IS PAYABLE

<sup>a</sup>**Illinois.**

TO ORDER WHERE IT IS DRAWN PAYABLE TO THE ORDER OF A SPECIFIED PERSON OR TO HIM OR TO HIS ORDER. IT MAY BE DRAWN PAYABLE TO THE ORDER OF—

1. A PAYEE WHO IS NOT MAKER, DRAWER, OR DRAWEE; OR
2. THE DRAWER OR MAKER; OR
3. THE DRAWEE; OR
4. TWO OR MORE PAYEES JOINTLY; OR
5. ONE OR SOME OF SEVERAL PAYEES; OR
6. THE HOLDER OF AN OFFICE FOR THE TIME BEING.<sup>a</sup>

WHERE THE INSTRUMENT IS PAYABLE TO ORDER THE PAYEE MUST BE NAMED OR OTHERWISE INDICATED THEREIN WITH REASONABLE CERTAINTY."

An instrument payable to order requires indorsement to pass the title or ownership. To be payable to order the payee must either be named in it or described sufficiently so that his identity can be easily ascertained,<sup>34</sup> (Sec. 1) and the instrument must state that it is payable to the order of the person named or described as the payee. If these words are not used and negotiability

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32. *Columbian Banking Co. vs. Bowen*, 134 *Wisc.* 218.  
*Nutting vs. Burked*, 48 *Mich.* 241, 12 *N. W.* 184.

33. *Stover vs. Hamilton*, 21 *Gratt (Va.)* 273.

34. *United States vs. White*, 2 *Hill*, 59.  
*Blackman vs. Lehman*, 63 *Ala.* 547.

cannot clearly be inferred from other language employed in the instrument it will not be negotiable.<sup>35</sup>

It is payable to order and must be transferred by indorsement, when it is payable to one's own self or order or, if a bill of exchange, when it is payable to the person upon whom it is drawn or to his order. It is also payable to order if it is payable to the order of a person who is not the maker, drawer or drawee. That person is then called the "payee." The instrument may be made or drawn payable to several persons jointly, or a person and a corporation jointly, a corporation being, by a fiction of the law, an artificial person having a distinct existence as such. It may also be made or drawn payable in the alternative to one or more of several persons whose names may be mentioned or who may be described in the instrument.

The holder of an office need not be designated by name.<sup>36</sup> An instrument payable to the holder of an office whose name it does not mention may be presented for payment when due by or to whatever person holds the office designated, and such a presentment is good and the instrument may be negotiated by the indorsement of the person holding the office named. (See Sec. 42.) The description of the officer, as for example, "Pay the Treasurer of Blank Company," would designate the payee with the certainty required by Section 1, Sub-section 5. So also is a payment made to the holder of the office designated in the instrument or indorsement as the payee good, even if it is not made at the office named. And if a person is named and described as the holder of an office and he has relinquished his office, presentment or payment to, or suit to enforce the instrument by his successor is

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35. Putnam vs. Crymes, 1 McMul. (S. C.) 9, 36 Am. Dec. 250.

36. McBroom vs. Treas. Lebanon Co., 31 Ind. 268

proper,<sup>37</sup> unless the instrument is his own property and the designation of the office he holds is used only for description. However, care must be exercised to see that the proper person accepts the instrument or that payment is made to the proper person when the drawee or payee is the holder of an office and is not mentioned by name, or if he is mentioned by name together with a description of the office he holds, and payment should never be made unless the instrument is at once surrendered. (Secs. 88, 119.) Even if the instrument is surrendered, payment to the wrong person will not always discharge the obligation. Exceeding great care must be exercised when there is any uncertainty in this regard. Reasonable certainty in describing the drawee or payee is required if he is not designated by name for the reason, as has already been stated, that it must appear to whom and where the instrument is to be presented, and in order that it shall indicate clearly by whose indorsement it may be negotiated and to whom payment is to be made. (Sec. 1.) It has been held that an instrument payable to a "Trustee" is not commercial paper and there are difficulties in the way of the transfer of such paper by indorsement which very well deserve careful inquiry.<sup>38</sup> (See Sec. 42.)

If an instrument is payable to a named person but not to his order, and if it is not payable to bearer as is provided in the next section, it is not negotiable, unless from the use of other words negotiability is clearly to be inferred. But an instrument which is negotiable at its origin continues to be so until it has been restrictively

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37. McDonald vs. McLaughlin, 74 Me. 480.

Tainter vs. Winter, 53 Me. 348.

Davis vs. Gore, 6 N. Y. 124.

38. National City Bk. vs. Bankers Trust Co., 37 App. (D. C.), 533.

Third Nat'l Bk. vs. Lange, 51 Md. 138, 34 Am. R. 304.

Sturtevant vs. Jacques, 14 Allen (Mass.) 523.



indorsed or is discharged by payment (sec. 47) and if, during its negotiation, the instrument obtains an indorsement from which words are absent which imply the power to further negotiate it, that is, which merely omits such words, it continues to be negotiable notwithstanding their omission. (Sec. 36.)

**When payable to bearer.**

“SEC. 9. THE INSTRUMENT IS PAYABLE TO BEARER

**Illinois.**

1. WHEN IT IS EXPRESSED TO BE SO PAYABLE; OR

2. WHEN IT IS PAYABLE TO A PERSON NAMED THEREIN OR BEARER; OR

3. “WHEN IT IS PAYABLE TO THE ORDER OF A FICTITIOUS OR NON-EXISTING PERSON, AND SUCH FACT WAS KNOWN TO THE PERSON MAKING IT SO PAYABLE; OR

4. WHEN THE NAME OF THE PAYEE DOES NOT PURPORT TO BE THE NAME OF ANY PERSON; OR

5. “WHEN THE ONLY OR LAST INDORSEMENT IS AN INDORSEMENT IN BLANK.”

An instrument is payable to and negotiable by the person who has it in his possession when it is written “pay to bearer,” these words meaning that the person who has the instrument in his possession and presents it for payment, is the proper person to receive the money due upon it. (Sec. 51.) Words of similar import may be employed. Payment to the bearer at the maturity of the instrument is good even though the person receiving payment does so without authority of the owner of the instrument, provided the person paying had at the time of payment no knowledge, or was not charged with any duty to know that the holder acted fraudulently in presenting the instrument and receiving the payment. (Sec. 88.) An instrument which is made payable to a named person whose name is followed by the words “or bearer” is payable to any one who has it in his possession and can be negotiated by him even if it does not bear the indorsement of the payee whose name appears

upon its face as the person to whom it is payable, for the obvious reason that such an instrument is to be paid either to the person named or to anybody else who bears it.

When an instrument is payable to a fictitious person, that is, one who is not real, but a pretended person, or if real, one who has no interest in the instrument and whose name is used merely for the purpose of deception,<sup>39</sup> and the person making the instrument knows at the time of issuing it that the payee is fictitious, it is payable to bearer. The obvious intention of this subsection is that such an instrument shall not require indorsement since no person capable of or interested in indorsing it exists. Quite obviously also, an instrument payable to the assumed, trade name under which one may be doing business would not become payable to bearer because the instrument was not made payable to the fictitious name for the purpose of deception.<sup>40</sup> (See Sec. 18.) If the instrument is so written that the words used to indicate to whom it is to be paid do not appear to be the name of any person, for example, a check payable to "Cash," or if it does not describe any one with the certainty required, (See Sec. 1) it is then, in either case, also payable to bearer. But the instrument is probably not payable to bearer if the person making it knowingly makes it payable to a person who is dead. Such an instrument would require the indorsement of the representatives of the decedent's estate.<sup>41</sup>

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39. *Snyder vs. Corn Exchange Natl. Bk.*, 221 Pa. 599, 128 Am. S. R. 780.

*Shipman vs. Bank of N. Y.*, 126 N. Y. 318.

40. *Edgerton vs. Preston*, 15 Ill. A. 23.

*Jones vs. Home Furnishing Co.*, 9 App. Div. 103, 41 N. Y. S. 71.

*Bryant vs. Eastman*, 7 Cush. (Mass.) 111.

41. *Lewisohn vs. The Kent & Stanley Co.*, 87 Hun 257.

A negotiable instrument made payable to order, as under Sec. 8, becomes payable to bearer and can be passed by mere delivery when the only or the last indorsement upon it is in blank. An indorsement in blank is made by writing one's name upon the back of the instrument without any words indicating another to whom it is to be paid. (Sec. 34.)

An instrument which is made payable to bearer or becomes so may be transferred by mere delivery. (Sec. 30.) It does not require indorsement by the holder to transfer the title. However, no person is liable upon the instrument, except as is otherwise provided in this act (Secs. 18, 19, 20), unless he has placed his signature upon it, and an instrument negotiated by mere delivery does not accumulate the security which added indorsements give to one negotiated by indorsement.

Terms when  
sufficient.  
"Wisconsin.

"SEC. 10. THE INSTRUMENT NEED NOT FOLLOW THE LANGUAGE OF THIS ACT, BUT ANY TERMS ARE SUFFICIENT WHICH CLEARLY INDICATE AN INTENTION TO CONFORM TO THE REQUIREMENTS HEREOF."a

The Negotiable Instruments Act was not intended to make invalid instruments which are not written in the language of this law. Any language, English or foreign,<sup>42</sup> may be used in drawing a bill, note or check which will show clearly that the parties to the instrument intended to make such an instrument as will substantially conform to the provisions of the Act. Doubt and uncertainty, confusion and delay, expensive litigation and dispute will be avoided, however, if instruments ordering or promising the payment of money and which are intended for negotiation, that is, for transfer by delivery or indorsement from one person to another in the regular course of trade, are so written that there can be no

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42. Debebian vs. Gala, 64 Md. 262, 265.

doubt of their character. Forms are readily obtainable, differing not very materially in their language from those employed since the fourteenth century, and wherever practicable they should be used.

If language is used in an instrument which by long established custom has obtained a special meaning or significance different from its ordinary meaning, it will be interpreted according to its special significance unless to do so would be clearly inconsistent with the purpose of the instrument.<sup>43</sup> The provisions of this Act definitely fix the rights, liabilities and duties of all the parties to commercial paper. Its provisions cover every requirement of the commercial relationships between business men and an instrument executed in conformity with this Act will have the same interpretation in every State in which it has been adopted.

Informal instruments which clearly indicate by the terms used that they are intended to be negotiable and which are not lacking in any of the essential requirements of this Act will be construed to be, and are, in effect, negotiable instruments.<sup>44</sup>

**Date; presumption as to.**

“SEC. 11. WHERE THE INSTRUMENT OR AN ACCEPTANCE OR ANY INDORSEMENT THEREON IS DATED, SUCH DATE IS DEEMED PRIMA FACIE TO BE THE TRUE DATE OF THE MAKING, DRAWING, ACCEPTANCE OR INDORSEMENT AS THE CASE MAY BE.”

This section means that when an instrument or an acceptance upon a draft or bill of exchange is dated, the date given is presumed to be the date when it was made or given. Likewise when an indorsement is dated. But if the date is an impossible one, then the nearest or prob-

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43. *Pilmer vs. Branch of State Bank*, 16 Iowa, 321.

44. *Owen vs. Blackburn*, 161 App. Div. (N. Y.) 827.  
*Kerr vs. Smith*, 156 App. Div. (N. Y.) 807.  
*Westberg vs. Chicago Lbr. Co.*, 117 Wis. 589.  
*Gilley vs. Harrell*, 118 Tenn. 115.



able one will be adopted. (April 31st may be April 30th, or May 1st, probably the latter.)<sup>45</sup> Of course, if the date given is not really the date upon which the act was done, the person disputing it will be permitted to show that it is not the true date and if the question arises in an action upon the instrument he must offer some evidence to support his contention. If he does not, the presumption in its favor will prevail and the date upon the instrument, acceptance, or indorsement will be taken to be its true date.<sup>46</sup>

**Antedated and  
postdated.**

“SEC. 12. THE INSTRUMENT IS NOT INVALID FOR THE REASON ONLY THAT IT IS ANTEDATED OR POSTDATED, PROVIDED THIS IS NOT DONE FOR AN ILLEGAL OR FRAUDULENT PURPOSE. THE PERSON TO WHOM AN INSTRUMENT SO DATED IS DELIVERED ACQUIRES THE TITLE THERETO AS OF THE DATE OF DELIVERY.”

If an instrument is dated before (antedated) or later than the real date of its issue (postdated) or an indorsement or acceptance is so dated, it is not thereby made invalid, unless the antedating or postdating is done for an unlawful or a fraudulent purpose. A postdated instrument is regarded very much the same as a bill payable so many days after sight, and the person to whom an instrument so dated is delivered or transferred acquires title to it, that is, he becomes its owner, upon the day when it is delivered or transferred to him and he may negotiate it immediately. It is not necessary that he hold it until the day it is dated before transferring it to another.<sup>47</sup> An instrument so dated, if payable at a given time after its date, does not become due earlier because issued before its date. The fact that it is postdated is not sufficient to put the indorsee upon notice of irregu-

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45. *Wagner vs. Kenner*, 2 Rob. (La.) 120.

46. *Mobley vs. Ryan*, 14 Ill. 51.

47. *Brewster vs. McArdle*, 8 Wend. 478.

*Passmore vs. North*, 13 East, 517, 104 Reprint, 471.

larity or fraud,<sup>48</sup> (Sec. 56) and the person who executes and delivers a postdated instrument cannot, in the absence of any agreement to the contrary, recall the instrument by reason of the fact that it is dated later than the date of its issue. He can, it is true, countermand payment of such an instrument, as he can of one not postdated, but the effect of this would be merely to prevent its payment when presented. His countermand would not release him from his obligation to the holder.<sup>49</sup> Even if the death of one of the parties to a postdated instrument occurs before the day of its date, this will not render the instrument invalid and will not, in all cases, amount to a revocation.<sup>50</sup> An antedated instrument can, of course, be put in issue by its maker at any time after its date. If it is payable at a given time the time of maturity is not postponed by the fact that it was delivered later than its date and if it is issued or negotiated after its maturity it is, by the provisions of Sec. 7, payable upon demand.

**When date may  
be inserted.**

“SEC. 13. WHERE AN INSTRUMENT EXPRESSED TO BE PAYABLE AT A FIXED PERIOD AFTER DATE IS ISSUED UNDATED, OR WHERE THE ACCEPTANCE OF AN INSTRUMENT PAYABLE AT A FIXED PERIOD AFTER SIGHT IS UNDATED, ANY HOLDER MAY INSERT THEREIN THE TRUE DATE OF ISSUE OR ACCEPTANCE AND THE INSTRUMENT SHALL BE PAYABLE ACCORDINGLY. THE INSERTION OF A WRONG DATE DOES NOT AVOID THE INSTRUMENT IN THE HANDS OF A SUBSEQUENT HOLDER IN DUE COURSE; BUT AS TO HIM, THE DATE SO INSERTED IS TO BE REGARDED AS THE TRUE DATE.”

If an instrument or an acceptance is payable at a fixed period after date or sight and it is issued or delivered

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48. *Albers vs. Hoffman*, 64 Misc. (N. Y.) 87.

49. *Usher vs. A. S. Tucker Co.*, 217 Mass. 441, 105 N. E. 360

50. *Passmore vs. North*, 13 East. 517, 104 Reprint, 471.

*Cutts vs. Perkins*, 12 Mass. 206.

*Nassano vs. Tuolumne County Nat. Bk.*, 20 Cal. A. 603, 130 P. 29.



without bearing a date, the holder may insert the true date of its issue or acceptance for a date is then necessary to fix its maturity. If he inserts a wrong date and the instrument in due course, meaning, by a regular transaction and for value before maturity, passes into the hands of another, the date inserted, even though wrong, is, as to this holder in due course, considered to be its true date. As between the maker of the instrument or acceptance and the holder who has knowingly inserted a wrong date, and any holder taking with notice of the insertion of the wrong date, it has been held that the instrument is thereby avoided and is not enforceable.<sup>51</sup> And, it seems, this might be true even though he has made the insertion in good faith believing it to be the true date.

Section 6 provides that if the date is omitted altogether the instrument is not thereby invalidated and this section gives the holder the right to insert the true date. It follows, therefore, that if the holder of an undated instrument or acceptance does not know its true date he ought not to insert any without the consent of the parties to whom he looks for payment.

Blanks; when  
may be filed.

<sup>a</sup>Wisconsin.

<sup>b</sup>Illinois.

<sup>c</sup>So. Dakota.

“SEC. 14. <sup>a</sup>WHERE THE INSTRUMENT IS WANTING IN ANY MATERIAL PARTICULAR, THE PERSON IN POSSESSION THEREOF HAS A PRIMA FACIE AUTHORITY TO COMPLETE IT<sup>b</sup> BY FILLING UP THE BLANKS THEREIN. AND A SIG-

NATURE ON A BLANK PAPER DELIVERED BY THE PERSON MAKING THE SIGNATURE IN ORDER THAT THE PAPER MAY BE CONVERTED INTO A NEGOTIABLE INSTRUMENT OPERATES AS A PRIMA FACIE<sup>c</sup> AUTHORITY TO FILL IT UP AS SUCH FOR ANY AMOUNT. IN ORDER, HOWEVER, THAT ANY SUCH INSTRUMENT WHEN COMPLETED MAY BE ENFORCED AGAINST ANY PERSON WHO BECAME A PARTY THERETO PRIOR TO ITS COMPLETION, IT MUST BE FILLED UP STRICTLY IN ACCORDANCE WITH THE AUTHORITY GIVEN AND WITHIN A REASONABLE TIME. BUT IF ANY SUCH

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51. *Houston Bank vs. Day*, 145 Mo. A. 410, 122 S. W. 756.

INSTRUMENT, AFTER COMPLETION, IS NEGOTIATED TO A HOLDER IN DUE COURSE, IT IS VALID AND EFFECTUAL FOR ALL PURPOSES IN HIS HANDS, AND HE MAY ENFORCE IT AS IF IT HAD BEEN FILLED UP STRICTLY IN ACCORDANCE WITH THE AUTHORITY GIVEN AND WITHIN A REASONABLE TIME.”

This section grants to the person in possession of the instrument the right to supply any material thing which may have been omitted when it was executed. Observe that this right is *prima facie*, that is to say, he is presumed to have authority to do so and this presumption continues until the person who is affected by what he does disputes it and is able to show by some evidence that he either had not this authority, or if he had, that it has not been properly exercised. If the omissions are correctly supplied and not made contrary to the terms of the transaction out of which the instrument arose, the right to make them will have been properly exercised.<sup>52</sup>

This section also provides that when a paper which is intended to be used as a negotiable instrument, and it is important that it must have been so intended,<sup>53</sup> is signed in blank, that is, without having been filled out as to the date, amount, to whom, and the time when it is payable, or in one or some of these particulars, or even if a blank piece of paper is signed by any person and delivered to another in order that it may be converted into and used as a negotiable instrument, the one to whom it is given has the right to supply the omissions or to write over the blank signature words which will convert the blank paper into a negotiable instrument for any amount. The person who thus supplies omissions or fills up such a paper cannot himself enforce its payment

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52. *Young vs. Baker*, 29 Ind. A. 130, 64 N. E. 54.  
*Marshall vs. Drescher*, 68 Ind. 359.  
*Weyerhauser vs. Dunn*, 100 N. Y. 150.

53. *Iowa St. Bank vs. Claypool*, 91 Kas. at 251.  
*Richards vs. Day*, 137 N. Y. 183.

by the one who signed it in blank, unless he has filled it up strictly in accordance with the authority which the signer gave him to do so, and unless he has done it within a reasonable time after its delivery to him. Nor can any one who is not a holder in due course enforce it, unless it was so done. And if one transfers such an instrument to another without first completing it in accordance with his authority, his transferee will not be deemed a holder in due course and cannot recover upon it.<sup>54</sup>

But if after completion by any one the instrument is negotiated in due course, that is, transferred before its maturity in a regular transaction for a valuable consideration to some other person who had no knowledge and is not in law chargeable with notice or any duty to know that it was incomplete when delivered, and not afterward completed in strict accordance with the authority given within a reasonable time after being signed in blank, such a holder and subsequent holders for value can enforce it against the signers in blank even if the person who filled up the blanks or converted into a negotiable instrument the signed blank piece of paper, did not do so in strict accordance with his authority, and within a reasonable time after it was so signed. Signers in blank cannot resist payment of an instrument in the hands of a holder in due course, even if it has not been filled up and issued in accordance with the authority under which it was given.

The particular circumstances of each case in which the question of the proper exercise of authority to fill in blank instruments arises will be inquired into and if there is doubt about the authority of the person who fills

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54. *Stone vs. Sargent*, 220 Mass. 445.

*Tower vs. Stanley*, 220 Mass. 429.

*Hartington Bk. vs. Breslin*, 88 Neb. 47.

*Boston Steel & Iron Co. vs. Steuer*, 183 Mass. 140.

it up, either of his right to do it or his right to fix the amount of the instrument, the one to whom such paper is offered may be put upon inquiry if any suspicious circumstances appear from the instrument itself; and if he is chargeable with notice, he cannot recover upon the instrument if the person who filled it up exceeded his authority in doing so. Notice is defined in Sec. 56.

The authority given by this section to fill up blank spaces in the instrument extends to the person in possession the right to fill up such blanks as are obviously and intentionally left unfilled, but the section is not intended to and does not grant the right to fill in any spaces upon the instrument which are not occupied by written or printed words, by writing additional words or figures upon it when the instrument is not signed in blank and is otherwise complete. Numerous decisions are to be found in the reports of all of the States upon this subject, the courts expressing widely diverging views. These cases have nearly always grown out of instruments upon which blank spaces have not been filled up by lining them out when the words or figures written in the instrument do not fully occupy the spaces intended for their insertion. Because of the opportunity thus given to alter the instrument, dishonest persons have been enabled to change its amount without in any way indicating that a fraudulent change has been effected. Of course, an obligation rests upon every signer of a negotiable instrument to so prepare it, or to see that at the time he attaches his signature to the instrument it is made out in such a way that it cannot readily be changed by fraud intending persons into any different contract from that which, on its face, it purports to be. But he is not bound to so prepare it that it is impossible to change it.<sup>55</sup>

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55. *Otis El. Co. vs. First Nat. Bk.*, 163 Cal. 31, 124 P. 704, 41 L. R. A. (N. S.) 529 and Note



The strong presumption exists that all men are honest, and if an instrument which is complete when delivered, even though it is so filled out that it is possible to change its amount by inserting additional words and figures in it, and it is so altered, this, of itself, is not sufficient to make liable for the altered sum the person whose obligation it is. For example, if a promissory note is written for seventy-five dollars and these words and figures are written into it, but in such a manner that a space is left before the first word and figure, and such an instrument is afterward fraudulently raised by adding the words "one hundred" before "seventy-five" and the figure 1 before 75, thereby changing it to a note for one hundred and seventy-five dollars, the alteration will be considered material alteration and the instrument unenforceable in the raised amount. On such a note the parties, except those who became parties after the alteration, would be liable only in the original amount.<sup>56</sup> (Sec. 125.) Aside from the instrument, however, they might be liable to a holder in due course for the full amount of the altered sum as damages, if their carelessness was responsible for the fraud and his injury, and they would be if their negligence amounted to an estoppel.<sup>57</sup> But this is a different subject and it is only referred to in order to illustrate the importance of properly making out a negotiable instrument. When the written words and figures do not completely fill the blank spaces, draw

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Garrard vs. Hadden, 67 Pa. St. 82.

Yocum vs. Smith, 63 Ill. 321.

Scotland Co. Nat. Bk. vs. O'Connell, 23 Mo. App. 165.

Hacket vs. First Nat. Bk. of Louisville, 114 Ky. 193.

56. Greenfield Savgs. Bk. vs. Gray, 123 Mass. 196.

Nat. Exchange Bk. vs. Lester, 194 N. Y. 461, 87 N. E. 771,  
21 L. R. A. (N. S.) 402, where cases are reviewed.

57. Holmes vs. Trumper, 22 Mich. 427.

Otis El. Co. vs. First Natl. Bk., 163 Cal. 31, 41 L. R. A.  
(N. S.) 529, 124 S. 704.

a line through the unoccupied parts. Consult section 6 for the right to supply omissions, section 23 for what constitutes a forgery and sections 124 and 125 for what are material alterations and their effect upon the instrument.

**Incomplete  
instrument not  
delivered.**

**“Wisconsin.**

“SEC. 15. WHERE AN INCOMPLETE INSTRUMENT HAS NOT BEEN DELIVERED IT WILL NOT, IF COMPLETED AND NEGOTIATED, WITHOUT AUTHORITY, BE A VALID CONTRACT IN THE HANDS OF ANY HOLDER, AS AGAINST ANY PERSON WHOSE SIGNATURE WAS PLACED THEREON BEFORE DELIVERY.”<sup>a</sup>

An initial delivery is essential to the validity of an incomplete negotiable instrument.

Now, if a bill, note, check, or other negotiable instrument is incomplete on its face, or is signed in blank, but not voluntarily delivered by the person whose obligation it is to become after it has been lawfully completed and has had a valid initial delivery, and such an instrument is negotiated without authority, it does not bind any one whose signature was placed upon it before its unlawful negotiation, even if it is presented in the hands of a holder in due course.<sup>58</sup> And when an instrument which is apparently complete but is not so because it lacks the signature of additional parties who are to sign it has been delivered under an agreement that it is not to take effect until the additional signatures are obtained, such an instrument is not a valid instrument between the original parties or a subsequent holder taking with notice.<sup>59</sup> (See Sec. 55.)

But persons who become parties to an incomplete undelivered instrument after it has been wrongfully completed and negotiated will be liable upon it to a subsequent holder in due course, because the contract is theirs

58. *Linick vs. Nutting*, 140 App. Div. 265, 267, 125 N. Y. S. 93.  
*Nance vs. Lary*, 5 Ala. 370.

59. *Hodge vs. Smith*, 130 Wis. 326.



in the form in which they signed it. The next section will inform you when and under what circumstances an instrument is deemed to be incomplete. (Also see Secs. 55 and 184.)

**Delivery; when effectual; when presumed.**

<sup>a</sup>North Carolina.

<sup>b</sup>Kansas.

**S. Dakota.**

“SEC. 16. EVERY CONTRACT ON A NEGOTIABLE INSTRUMENT IS INCOMPLETE AND REVOCABLE UNTIL DELIVERY OF THE INSTRUMENT FOR THE PURPOSE OF GIVING EFFECT THERETO. AS BETWEEN IMMEDIATE PARTIES, AND AS REGARDS A REMOTE PARTY OTHER THAN A HOLDER IN DUE COURSE, THE DELIVERY, IN ORDER TO BE EFFECTUAL, MUST BE MADE EITHER BY OR UNDER THE AUTHORITY OF THE PARTY MAKING, DRAWING, ACCEPTING<sup>a</sup> OR ENDORSING, AS THE CASE MAY BE; AND IN SUCH CASE THE DELIVERY MAY BE SHOWN TO HAVE BEEN CONDITIONAL, OR FOR A SPECIAL PURPOSE ONLY, AND NOT FOR THE PURPOSE OF TRANSFERRING THE PROPERTY IN THE INSTRUMENT.<sup>b</sup> BUT WHERE THE INSTRUMENT IS IN THE HANDS OF A HOLDER IN DUE COURSE, A VALID DELIVERY THEREOF BY ALL PARTIES PRIOR TO HIM SO AS TO MAKE THEM LIABLE TO HIM IS CONCLUSIVELY PRESUMED. AND WHERE THE INSTRUMENT IS NO LONGER IN THE POSSESSION OF A PARTY WHOSE SIGNATURE APPEARS THERFON, A VALID AND INTENTIONAL DELIVERY BY HIM IS PRESUMED UNTIL THE CONTRARY IS PROVED.”

Like other contracts, a negotiable instrument has no valid inception until it has been delivered by the maker or drawer for the purpose of giving effect to it. The contract of indorsement is incomplete until the indorser delivers the instrument to his transferee for the purpose of giving effect to his indorsement, and the contract of the acceptor is incomplete until he returns the accepted instrument to the holder for the purpose of giving effect to his acceptance or notifies him of the acceptance. (Sec. 191.) In every case the contract is revocable until it is delivered for the purpose of giving effect to it;<sup>60</sup> and as to all parties except a holder in due

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60. *Burson vs. Huntington*, 21 Mich. 416, 431.  
*Burr vs. Beckler*, 264 Ill., 230.

course, the delivery is not effectual, that is completed and binding unless it is made by the party who issues, accepts or indorses the instrument or by his authority. And, except when the instrument is in the hands of a holder in due course, it can in every case be shown that the delivery was not for the purpose of giving effect to instrument or transferring its ownership, if it is a fact that its effective delivery was not intended. But if one's signature appears anywhere upon a negotiable instrument and the instrument is no longer in his possession an intentional and valid delivery by him to any one who holds it will be presumed until he is able to show that he did not deliver or intend to deliver the instrument to the holder, or any other prior party, for the purpose of transferring the ownership of the instrument.<sup>61</sup>

But now observe that when an instrument which is complete in every other respect except delivery, comes into the hands of a holder in due course, (see sec. 53 for definition) a valid delivery by all persons whose signatures appear upon it when it reaches him is conclusively presumed, that is to say, the contrary cannot be shown, as to him, even if it is true. All parties upon the instrument are liable to this holder in due course notwithstanding any rights or defenses they may have among themselves.<sup>62</sup>

By reason of this section a holder in due course of a negotiable instrument which at its inception was complete in every other respect except delivery<sup>63</sup> can enforce it against all parties, and all parties are liable thereon to him if the instrument, after completion, was lost by

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61. Hill vs. Hall, 191 Mass. 253.  
Niblock vs. Sprague, 200 N. Y. 390.  
Hodge vs. Smith, 130 Wisc. 326.

62. Buzell vs. Tobin, 201 Mass. 1.

63. Schaeffer vs. Marsh, 90 Misc. (N. Y.) 307.

or stolen from them, or any of them, or from some one not a party to it, or its issue was obtained by fraud.<sup>64</sup> However, the holder of a stolen instrument has the burden of proving that he is a holder in due course. But this is sufficiently established if he shows that he derives his title from a holder in due course when he does not himself possess the necessary qualifications.<sup>65</sup> (Secs. 57 and 58.)

When language  
of instrument is  
ambiguous.

<sup>a</sup>N. Carolina.

<sup>b</sup>Wisconsin.

“SEC. 17. WHERE THE LANGUAGE OF THE INSTRUMENT IS AMBIGUOUS OR THERE ARE OMISSIONS THEREIN, THE FOLLOWING RULES OF CONSTRUCTION APPLY:

1. WHERE THE SUM PAYABLE IS EXPRESSED IN WORDS AND ALSO IN FIGURES AND THERE IS A DISCREPANCY BETWEEN THE TWO, THE SUM DENOTED BY THE WORDS IS THE SUM PAYABLE: BUT IF THE WORDS ARE AMBIGUOUS OR UNCERTAIN, REFERENCE MAY BE HAD TO THE FIGURES TO FIX THE AMOUNT;

2. WHERE THE INSTRUMENT PROVIDES FOR THE PAYMENT OF INTEREST, WITHOUT SPECIFYING THE DATE FROM WHICH INTEREST IS TO RUN, THE INTEREST RUNS FROM THE DATE OF THE INSTRUMENT, AND IF THE INSTRUMENT IS UNDATED, FROM THE ISSUE THEREOF;

3. WHERE THE INSTRUMENT IS NOT DATED, IT WILL BE CONSIDERED TO BE DATED AS OF THE TIME IT WAS ISSUED;

4. WHERE THERE IS A CONFLICT BETWEEN THE WRITTEN AND PRINTED PROVISIONS OF THE INSTRUMENT, THE WRITTEN PROVISIONS PREVAIL;

5. WHERE THE INSTRUMENT IS SO AMBIGUOUS THAT THERE IS DOUBT WHETHER IT IS A BILL OR NOTE, THE HOLDER MAY TREAT IT AS EITHER, AT HIS ELECTION.

6. WHERE A SIGNATURE IS SO PLACED UPON THE INSTRUMENT THAT IT IS NOT CLEAR IN WHAT CAPACITY THE PERSON MAKING THE SAME INTENDED TO SIGN, HE IS TO BE DEEMED AN INDORSER;

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64. Massachusetts Natl. Bk. vs. Snow, 187 Mass. 160.

Jefferson Bk. vs. Chapman, 122 Tenn. 415.

City of Adrian vs. Whitney Center Nat. Bk., 180 Mich. 171, 179.

65. Northampton Natl. Bk. vs. Kidder, 106 N. Y. 221.

Hinkley vs. Merch. Bank, 131 Mass. 147.

7. WHERE AN INSTRUMENT CONTAINING THE WORDS "I PROMISE TO PAY" IS SIGNED BY TWO OR MORE PERSONS, THEY ARE DEEMED TO BE JOINTLY AND SEVERALLY LIABLE THEREON."<sup>66</sup>

When the meaning of the instrument or of any words or terms used in it is not clear the seven rules given in this section govern in its construction. They cover the ambiguities most frequently met with in negotiable instruments.

The first fixes the written words which express the sum payable as determining the amount to be paid upon the instrument. Of course, an effort must be made to reconcile the words and figures and they ought to be considered together but, strictly speaking, the marginal figures form no part of the instrument; the words control. To such an extent is this true, that the holder may with impunity change the marginal figures to make them agree with the body of the instrument.<sup>66</sup>

The second establishes that an instrument payable with interest bears interest from its date, unless it clearly specified that it does not begin to run until a later time. If it is not dated and its true date is not supplied and inserted by the holder, as he has a right to do under Secs. 13 and 14, then interest commences from the date of the delivery of the instrument to the first person who received it from the maker or drawer. If the instrument does not expressly declare that it bears interest, and unless it expressly provides that it shall not, it will draw interest from the date of its maturity until paid, at the legal rate in effect at its maturity. The Act does not itself contain a provision to this effect, but such is the universal law and in this case interest is considered

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66. *Smith vs. Smith*, 1 R. I. 398, 53 Am. D. 652.  
*Shreyer vs. Hawkes*, 22 Ohio St. 308.  
*Norwich Bk. vs. Hyde*, 13 Conn. 281.



to be in the nature of damages for the failure to pay the debt on the date when, by its terms, the instrument ought to have been paid.<sup>67</sup>

The third supposes that the date omitted has not been supplied by any holder and in that event the instrument is considered to bear the date of the day when it was issued by the maker or drawer.

The fourth establishes in respect to the whole instrument that when there is a difference or conflict between its written and printed parts the written parts prevail, that is, they are considered to express the true meaning of the instrument, regardless of any contradiction which may appear in its printed portions, if the two cannot be reconciled.<sup>68</sup>

The fifth permits the holder of an instrument which, by reason of ambiguity in the words employed in drawing it, may be either a promissory note or a draft, to consider it as either, whichever he may choose. However, if he once elects to consider the instrument a note, and treats it accordingly, he cannot later change his mind and treat it as a bill of exchange, or just the other way.<sup>69</sup>

By the sixth, it is established that if one places his signature anywhere upon the instrument in such a way that it is not clear in what capacity he intended to be bound by it, he is considered an indorser, entitled to an indorser's rights and liable only as such.<sup>70</sup> (See sections 63 and 64.)

If two or more persons sign a promissory note upon its face and it contains a promise in the singular num-

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67. O'Brien vs. Young, 95 N. Y. 428.

68. Miller vs. Hannibal, Etc., R. R. Co., 90 N. Y. 430.

69. Dennett vs. Codman, 168 Mass. 468, 47 N. E. 131.

Arch. Stone Co. vs. St. Louis, 138 Mo. 608, 39 S. W. 467.

Terry vs. Munger, 121 N. Y. 161, 169.

70. Germania Natl. Bk. vs. Mariner, 129 Wis. 544, 100 N. W. 574.

ber, "I," then each is severally liable, that is, each is liable to the holder for the full sum promised, and all are as well jointly liable, that is, liable together, for the debt. The importance of the distinction between the joint or several liability of the parties is a matter more particularly for consideration when it becomes necessary to bring an action upon the instrument, and then, of course, parties jointly liable must be joined in the suit.<sup>71</sup> If the liability of the parties upon the instrument is joint and several, separate actions may be maintained against each or they may be joined in one.<sup>72</sup>

**"SEC. 18. NO PERSON IS LIABLE ON THE**

<b>Only persons signing liable— liability of per- sons signing in trade or assumed name. "Wyoming.</b>	<b>INSTRUMENT WHOSE SIGNATURE DOES NOT AP- PEAR THEREON, EXCEPT AS HEREIN OTHER- WISE EXPRESSLY<sup>a</sup> PROVIDED. BUT ONE WHO SIGNS IN A TRADE OR ASSUMED NAME WILL BE LIABLE TO THE SAME EXTENT AS IF HE SIGNED IN HIS OWN NAME."</b>
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While this section provides that no person whose signature does not appear upon the instrument is liable upon it, it is not to be inferred that he must himself have signed it. There is an exception to this rule as will appear in the next two sections.

When any person conducts his business under a trade name, or any one assumes a name not his own for business purposes, or for a particular transaction as a substitute for his own, and places his trade name, or the name which he has assumed upon a negotiable instrument, he is liable in the same manner and to the same extent as he would be if he had signed his own. The holder of an instrument signed in this manner may present it to the person thus signing it and all notices required by other sections of this Act may be given to him in either his

71. Foster vs. Collner, 107 Pa. 305.  
Erwin vs. Scotten, 40 Ind. 389.

72. Hodgens vs. Jennings, 148 App. Div. 879, 133 N. Y. S. 584.



trade or assumed name, or in his real name, if it is known.<sup>73</sup> It is not necessary that they be given in both, but it is good practice to do so. He may be sued in his trade name or his real name.<sup>74</sup>

An instrument which is made payable to a person under his assumed, business name, does not, by the effect of Section 9, Sub-section 3, become payable to bearer, although that name is, strictly speaking, the name of a fictitious person.<sup>75</sup>

**Signature by agent; authority how shown.**      “SEC. 19. *a*THE SIGNATURE OF ANY PARTY MAY BE MADE BY A DULY AUTHORIZED AGENT. NO PARTICULAR FORM OF APPOINTMENT IS  
*a*Kentucky.      NECESSARY FOR THIS PURPOSE; AND THE AUTHORITY OF THE AGENT MAY BE ESTABLISHED AS IN OTHER CASES OF AGENCY.”

One need not himself sign his name to the instrument. He may authorize another to do it for him. The one signing for him is called his agent, and his authority may be either oral or in writing, or it may even be implied. It is implied when one person has knowingly permitted another to do this for him a sufficient number of times to amount to a practice<sup>76</sup> and it has become generally known,<sup>77</sup> or if he has stood by without objection, in apparent acquiescence, when it was done in his presence, or does not repudiate it when notice of the fact is given him in such a manner and under such circumstances as require him to speak.<sup>78</sup> If this can be shown the person whose name is signed upon the instrument

73. Union Brewing Co. vs. State Bank, 240 Ill. 454.

74. Bresee vs. Snyder, 94 Nebr. 384, 143 N. W. 219.  
Alabama Coal Min. Co. vs. Brainard, 35 Ala. 476.

75. Jones vs. Home Furn. Co., 9 App. Div. 103, 41 N. Y. S. 71.

76. Crocker vs. Colwell, 46 N. Y. 212.  
DeWitt vs. Walton, 9 N. Y. 571.

77. Mfrs. & Merch. Bk. vs. Follett, 11 R. I. 92.

78. R. R. Co. vs. Cowell, 28 Pa. St. 329.  
Cornerstone Bk. vs. Rhodes, 5 Ind. T. 256, 260, 82 S. W. 739,  
67 L. R. A. 812.

by another is liable upon it. When the signature is made by a person who appears to be acting in the capacity of a known agent and assumes to sign another's name to an instrument, in the absence of express authority, the transaction of which the instrument forms a part must be of the same general character as others in which the principal has permitted the agent to act, and if there is such a substantial difference, either in the character of the transaction or the amount involved as would place an ordinarily prudent man upon his guard and make him suspicious of the agent's right to sign his principal's name, the one to whom such an instrument is offered ought not to accept it without first satisfying himself that the agent has acted by the authority of the person for whom he claims to act, and within the limits of the authority which he appears to have. The authority, or the lack of it, may be established as in other cases of agency and it is a familiar doctrine of the law of agency that general authority given by one person to another to conduct his business, implies the authority to borrow money in his name for the needs of the business and the power to execute or indorse commercial paper for that purpose.<sup>79</sup> The duty to inquire into the actual authority of an agent who signs by virtue of written power is discussed under Section 21.

**Liability of  
persons signing  
as agent, etc.  
"Virginia.**

"SEC. 20. WHERE THE INSTRUMENT CONTAINS OR A PERSON ADDS TO HIS SIGNATURE WORDS INDICATING THAT HE SIGNS FOR OR ON BEHALF OF A PRINCIPAL, OR IN A REPRESENTATIVE CAPACITY,<sup>a</sup> HE IS NOT LIABLE ON THE INSTRUMENT IF HE WAS DULY AUTHORIZED; BUT THE MERE ADDITION OF WORDS DESCRIBING HIM AS AN AGENT, OR AS FILLING A REPRESENTATIVE CHARACTER, WITHOUT DISCLOSING HIS PRINCIPAL, DOES NOT EXEMPT HIM FROM PERSONAL LIABILITY."

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79. *Valequette vs. Clark Bros. Coal Min. Co.*, 83 Vt. 538.

An agent who signs his name to an instrument in such a manner that his signature shows or the instrument itself upon its face, or anywhere, contains words which show that in making, indorsing or accepting it he is acting in behalf of another and for whom, is not himself liable upon it and cannot be held to pay it.<sup>80</sup> He must, of course, act within his authority otherwise he is liable as though he were acting for himself.<sup>81</sup> If he has acted by and within the limits of the authority granted to him by his principal and the instrument discloses the name of his principal, the latter, and not the agent, will be bound upon it. (Sec. 19.) But if he merely describes himself as an agent, and the instrument contains words which show that he is acting for another without disclosing the name or identity of the person or persons for whom he is acting, he will not be relieved of personal liability to the holder unless the latter knows the nature and the object of the instrument and takes it with knowledge that the agent is authorized and acting in a representative capacity and knows the name of the person for whom he is acting and that he does not intend to be individually bound upon it.<sup>82</sup>

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80. *Hitchcock vs. Buchanan*, 105 U. S. 416, 26 L. Ed. 1078.  
*Continental Natl. Bk. vs. Heilman*, 81 Fed. 36 (Aff. 86 Fed. 514).

*Germania Nat'l Bk. vs. Mariner*, 129 Wis. 544, 546, 100 N. W. 574.

*Chipman vs. Foster*, 119 Mass. 189.

*Carpenter vs. Farnsworth*, 106 Mass. 561, 8 Am. St. R. 360.

81. *Tuttle vs. Greenfield First Nat. Bk.*, 187 Mass. 533, 105 Am. S. R. 563.

*Bank vs. Looney*, 99 Tenn. 278.

82. *Metcalf vs. Williams*, 104 U. S. 93, 98.

*Kirby vs. Ruegamer*, 107 App. Div. 491, 95 N. Y. Supp. 408.

*Merch. Natl. Bk. vs. Clark*, 139 N. Y. 314, 34 N. E. 910, 36 Am. S. R. 710.

*Casco Nat'l Bk. vs. Clark*, 139 N. Y. 307, 34 N. E. 910, 36 Am. S. R. 705.

*Keidan vs. Winegar*, 95 Mich. 430, 54 N. W. 901, 20 L. R. A. 705.

*Newport vs. Smith*, 61 Minn. 277.

The holder of such an instrument may recover from the agent or from his principal when he learns for whom he acted.<sup>83</sup> He must, within a reasonable time after the principal's name becomes known, elect, that is, choose which one, the agent or the principal, he will hold and will be bound by his election.<sup>84</sup> If he chooses to hold the principal, he may recover from him upon the original consideration for the instrument but not upon the instrument itself,<sup>85</sup> for only those persons are liable upon the instrument whose names appear upon it. (Sec. 18.)

If the agent signs the instrument without authority he is personally liable whether it discloses the name of his pretended principal or does not.<sup>86</sup> Whatever conflict of authority has heretofore existed as to the agent's liability upon the instrument, and there have been decisions on both sides of this question here and in England, is settled by this section. In some jurisdictions it has been held that an agent signing without authority or failing to disclose his principal, is not liable upon the instrument, for the reason that the contract is not his.<sup>87</sup> He was, therefore, in some jurisdictions, held liable, not on the instrument itself, but for the damage resulting from his unlawful or unauthorized act.<sup>88</sup> In others, his liability was held to be upon the instrument.<sup>89</sup> Now, however, he

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83. *Kayton vs. Barnett*, 116 N. Y. 625, 23 N. E. 24.  
*Chemical Natl. Bk. vs. City Bank*, 156 Ill. 149, 40 N. E. 328.  
*Lovell vs. Williams*, 125 Mass. 439.
84. *Mechem Agency*, Sec. 173 and Notes.
85. *Coaling Co. vs. Howard*, 130 Ga. 807, 21 L. R. A. (N. S.) 1051.  
*Harper vs. Tiffin Nat. Bk.*, 54 Oh. St. 425, 44 N. E. 97.
86. *Mechem Agency*, Sec. 1374.
87. *Coaling Co. vs. Howard*, 130 Ga. 807, 21 L. R. A. (N. S.) 1051.  
*Mechem Agency*, Sec. 1397.  
*Ogden vs. Raymond*, 22 Conn. 379, 385, 58 Am. Dec. 429.
88. *Mechem Agency*, Sec. 1398.  
*Noyes vs. Loring*, 55 Me. 408.
89. *Mechem Agency*, Sec. 1395.  
*Weare vs. Gove*, 44 N. H. 196.



is everywhere liable upon the instrument, and though in theory this may not be correct, the rule "will" as a writer upon the subject has said, "tend to increase negotiability, and in addition to that has the excellent advantage of settling all conflict of authority upon the subject." Section 69 provides the manner in which and to what extent an agent or broker is liable who negotiates an instrument by delivery without indorsement.

**Signature by  
procuration;  
effect of.**

"SEC. 21. A SIGNATURE BY "PROCURATION" OPERATES AS NOTICE THAT THE AGENT HAS BUT A LIMITED AUTHORITY TO SIGN, AND THE PRINCIPAL IS BOUND ONLY IN CASE THE AGENT IN SO SIGNING ACTED WITHIN THE ACTUAL LIMITS OF HIS AUTHORITY."

In this section the technical legal term "by procuration" means, in or on behalf of another, acting under his written authority, and it has of course, to do with the doctrine of agency. More definitely, the term means one person's signature attached to an instrument, not in his own behalf, and as his own act, but in behalf of some other named person from whom he has express authority to do it, usually in the way of written power of attorney, and as whose act it is to be considered. This form of signature is uncommon here and very infrequently employed upon negotiable instruments of the kind which are used in ordinary commercial transactions. Where it is found it is usually abbreviated thus "per. proc." or merely "p. p." or the signature is followed by the words "attorney in fact," when the agent is acting for an individual. The section would, however, seem to be equally applicable to corporation officers or representatives signing in a representative capacity. Whenever a name is so signed all persons taking the instrument are by that fact alone notified to be on their guard, and to satisfy themselves positively that the per-



son who so signs the instrument is acting by proper authorization of his principal, and not only that, but to satisfy themselves that he is acting within the actual limits of the authority given him to execute or indorse the instrument.

When the instrument discloses that the agent signed per power of attorney or formal appointment it cannot be shown that his ostensible authority was greater than that granted in the written authorization. Parties dealing with an agent known by them to be acting under an express grant, whether the authority be general or special, are bound to take notice of the extent of the authority conferred. They must be regarded as dealing with him with that grant before them, and are bound, at their peril, to notice the limitations thereto prescribed either by its own terms, or by construction of the law.<sup>90</sup> Thus a signature "per. proc." or made by someone known to be acting under formal authorization carries with it a more solemn warning to the person to whom it is offered and puts upon him a graver burden to inquire into the authority of the person who uses it than does the signature by one who is acting under some general authority from his principal, derived from written or oral authorization, or implied from an authorized course of dealing. One who does not make this inquiry when chargeable with the duty to do so must bear any loss he may suffer, if the agent signing by procuration exceeds the actual limits of his authority.<sup>91</sup>

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90. Mechem Agency, Sec. 707.

Mt. Morris Bk. vs. Gorham, 169 Mass. 519.

Ferguson vs. Davis, 118 N. C. 946.

91. Mt. Morris Bk. vs. Gorham, 169 Mass. 519.

**Effect of indorsement by infant or corporation.** "SEC. 22. THE INDORSEMENT OR ASSIGNMENT OF THE INSTRUMENT BY A CORPORATION OR BY AN INFANT" PASSES THE PROPERTY THEREIN, NOTWITHSTANDING THAT FROM WANT OF CAPACITY THE CORPORATION OR INFANT<sup>a</sup> MAY INCUR NO LIABILITY THEREON."

Infants, that is, persons who have not yet attained legal age, are not considered in the law to have full capacity to enter into business obligations. Any business act which they perform while under legal age, except one by which they provide themselves with their necessities, is voidable by them when they reach full age. The time at which they attain full age is not alike in all the States. But, in regard to negotiable instruments, while they cannot make or indorse a note, or accept or indorse a bill during minority which they could not repudiate after coming of age, unless it is one for necessities,—when a note or bill passes through the hands of an infant, his indorsement of his signature upon it transfers the title to the instrument to the next holder and it may be negotiated by him, and by subsequent holders, as though the infant were under no disability, and may be enforced against all other parties. The section does not deprive an infant of his right to repudiate acts performed during his disability by minority, including the act of passing his title to a negotiable instrument by his indorsement. It seems never to have been specifically decided that he has this right, but if he has, he is not deprived of it by this section.<sup>92</sup>

A corporation has only such powers as are granted to it in its charter or are incident or necessary to the business in which it is engaged. It cannot be held for acts of its officers which are not properly within the scope of its powers, but, like an infant, its indorsement

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92. Roach vs. Woodhall, 91 Tenn. 206.

upon a negotiable instrument, even though made in a transaction not authorized by its charter, or not incident or necessary to the conduct of its business, will, nevertheless, though it may impose no liability upon the corporation, operate to pass the title to the next holder who may continue the negotiation.

**Forged signature; effect of.**  
**Illinois.**

“SEC. 23. WHERE A SIGNATURE IS FORGED OR MADE WITHOUT AUTHORITY<sup>a</sup> OF THE PERSON WHOSE SIGNATURE IT PURPORTS TO BE, IT IS WHOLLY INOPERATIVE, AND NO RIGHT TO RETAIN THE INSTRUMENT, OR TO GIVE A DISCHARGE THEREFOR, OR TO ENFORCE PAYMENT THEREOF AGAINST ANY PARTY THERETO, CAN BE ACQUIRED THROUGH OR UNDER SUCH SIGNATURE, UNLESS THE PARTY AGAINST WHOM IT IS SOUGHT TO ENFORCE SUCH RIGHT IS PRECLUDED FROM SETTING UP THE FORGERY OR WANT OF AUTHORITY.”

A forged signature or indorsement does not create any liability on the part of the person whose signature it appears to be. One who holds an instrument upon which any signature has been forged and who has obtained title by or through the forged signature or indorsement, has no right to retain the instrument, to receive payment upon it or enforce it against any party, even if the holder is an innocent holder for value.<sup>93</sup> If the person whose signature is forged pays the instrument, unless he does so voluntarily, knowing its character, he can recover the money he pays upon it,<sup>94</sup> although this right is sometimes denied him when innocent persons have suffered loss by reason of his mistake.

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93. *Beem vs. Farrell*, 135 Ia. 670, 677.  
*Hovorka vs. Hemma*, 103 Ill. A. 443.  
*Stein vs. Empire Trust Co.*, 148 App. Div. (N. Y.) 850.  
*Camp vs. Carpenter*, 52 Mich. 375.

94. *Meyer vs. Rosenheim*, 115 Ky. 409.  
*Coburn vs. Neal*, 94 Me. 541, 48 A. 178.  
*Jones vs. Miners Bk.*, 144 Mo. A. 428, 128 S. W. 129.  
*Hefner vs. Dawson*, 63 Ill. 403, 14 Am. R. 123.  
*Corwith First St. Bk. vs. Williams*, 143 Ia. 177, 121 N. W. 702,  
 136 Am. St. R. 759, 23 L. R. A. (N. S.) 1234 and Note.

When the fraud affects only individual interests and is not a crime<sup>95</sup> he may, however, be prevented by some act of his own from avoiding the instrument, or recovering a payment made by mistake if his signature is forged or made without authority. Such laws as apply to these circumstances are not alike and are not interpreted alike in all States, and they must be examined in each particular transaction of this character in the State where the forged instrument or signature has been executed, or where it is sought to be enforced. When the doctrine of estoppel has been recognized in regard to forged or fraudulent instruments, it is based upon such conduct as would preclude the person asserting it from setting up the forgery or want of authority, and must be a conduct from which an admission would be implied that he intended to be bound by the alleged fraudulent misuse of his name;<sup>96</sup> or the person to be charged may be estopped by an express ratification of his signature.<sup>97</sup>

One of the principal applications of this section is to the payment by a bank of checks or other instruments upon which a signature has been forged or fraudulently made. When a bank has certified a check to which the drawer's name has been forged, or which has been raised, and it is at, or after certification, in the hands of a holder in due course he can compel its payment.<sup>98</sup> And,

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95. *B. & L. Assn. vs. Walton*, 181 Pa. St. 201.

*Shisler vs. Van Dyke*, 92 Pa. St. 447.

*Greenfield Bk. vs. Crafts*, 4 Allen (Mass.) 447.

96. *Terry vs. Bissell*, 26 Conn. 41.

*Pettyjohn vs. Natl. Exchg. Bk.*, 101 Va. 111.

*B. & L. Assn. vs. Walton*, 181 Pa. St. 201.

97. *Owsley vs. Philips*, 78 Ky. 517, 521.

*Shinew vs. Bowling Green 1st Nat. Bk.*, 84 Ohio St. 497, 36

*L. R. A. (N. S.)* 1006 and Note, *Ann. Cases*, 1912 C. 537.

98. *Espy vs. Bank of Cinti.*, 18 Wall. (U. S.) 604.

*Adam vs. Mfrs. Nat. Bk.*, 63 Misc. (N. Y.) 403, 404 (116 N. Y. S. 595).

*Trust Co. of Am. vs. Hamilton Bk.*, 127 App. Div. (N. Y.) 515.



again, if a bank pays to a holder in due course a check drawn upon it to which the drawer's name has been forged it cannot recover from him unless he has contributed to the forgery, fraud, or deception by a greater degree of negligence than that of the paying bank, by which I mean that his own negligence must have been responsible for the loss.<sup>99</sup>

The rule by which it must be determined whether or not recovery may be had when an indorsement is forged upon an otherwise regular instrument not payable to bearer or made in fact to the person entitled thereto<sup>1</sup> is, however, quite different. The drawee is presumed to know the drawer's signature (Sec. 62), but no such presumption is applied to the signature of the indorser. The presenter who receives payment of an instrument upon which an indorsement has been forged or made without authority, will be obliged to refund the payment to the drawee<sup>2</sup> unless, by reason of culpable delay in the discovery and giving notice of the fraud, his condition has so changed that to require him to do so would be unjust.<sup>3</sup> Should he be required to refund, however, he may then recover from prior indorsers who indorsed the instrument subsequent to the forgery and who will be held to their warranties as is provided in Secs. 65 and 66, and each of these may in turn recover of his immediate indorser, back to the time when the forgery occurred. Prior parties are not affected by the forgery.<sup>4</sup>

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99. *Comm'l. Nat. Bk. vs. First Natl. Bk.*, 30 Md. 11.  
*Woods vs. Colony Bk.*, 114 Ga. 683.  
*State Bk of Chicago vs. First Nat. Bk.*, 87 Nebr. 351.  
*First Nat. Bk. vs. Nor. Western Nat. Bk.*, 152 Ill., 296, 306.
1. *Bartlett vs. First Nat. Bk.*, 247 Ill. 490, 93 N. E. 337.
2. *Bartlett vs. First Natl. Bk.*, 247 Ill. 490, 93 N. E. 337.  
*Gallo vs. Brooklyn Sav. Bk.*, 119 N. Y. 222, 92 N. E. 633.  
*Trust Co. of Amer. vs. Hamilton Bk.*, 127 App. Div. 515, 112 N. Y. S. 84.
3. *Yatesville Banking Co. vs. Fourth Natl. Bk.*, 10 Ga. A. 1, 72 S. E. 528.
4. *Beem vs. Farrell*, 135 Iowa, 670.



One for whose account a bank has paid or certified a forged or fraudulent instrument owes a duty to the bank to notify it of the fraud immediately upon its discovery, and if his negligence or undue delay in giving notice cause the bank to lose an opportunity to indemnify itself the loss upon the instrument will fall upon him.<sup>5</sup>

Still another distinction exists. When the presenter receives payment as the agent of another for collection, he will be required to refund, unless the instrument discloses the name of his principal, thus carrying on its face notice that the presenter is acting merely as agent, and he has actually paid over the amount to his principal before notice.<sup>6</sup>

If instead of being a forgery, the signature is made without authority the instrument is, likewise, not enforceable against the person whose fraudulent signature is placed upon it by some one who pretends to act as his agent but acts without his authority. Such a signature or indorsement does not convey to the transferee the title of the instrument or the right to receive payment, and does not create any obligations on the part of the person whose signature it purports to be. But in this case also the person whose name is so used may become liable and be held to pay the instrument if he has done some act, or omitted to perform some duty in respect to the instrument, which will preclude him from making this defense.<sup>7</sup> (See Sec. 19.)

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5. *Leather Mfrs. Bk. vs. Morgan*, 117 U. S. 96.

*Traders Natl. Bk. vs. Rogers*, 167 Mass. 315.

*States vs. First Nat. Bk.*, 203 Pa. 69, 74.

6. *Natl. Park Bk. vs. Seaboard Bk.*, 114 N. Y. 28, 20 N. E. 612.

*Natl. City Bk. vs. Westcott*, 118 N. Y. 468, 28 N. E. 900, 16 Am. S. R. 771.

*Springs vs. Hanover Natl. Bk.*, 145 App. Div. (N. Y.) 188.

7. *Terry vs. Bissell*, 26 Conn. 23.

*Pettyjohn vs. Natl. E. Bk.*, 101 Va. 111.

*Jett vs. Standafer*, 143 Ky. 787.

There are certain other circumstances out of which a puzzling difficulty has sometimes arisen which is to be determined by the application of this section. I refer to that situation in which one fraudulently impersonating another has procured a bona fide instrument, usually a check, to be issued to him by the drawer who acts in the honest belief that he is issuing the instrument to an entirely different person with whom he supposes himself to be dealing. When the instrument which is so procured has been paid by the bank upon which it is drawn or has been negotiated to a holder in due course, the courts have usually held that the drawer must bear the loss occasioned, notwithstanding that its issue was obtained by fraud or misrepresentation.<sup>8</sup> Indeed, a decision to the contrary, rendered since the passage of the Act, has been very severely criticised as holding what the learned judge who rendered it thought the law ought to be rather than what it is.<sup>9</sup> This criticism is, however, unmerited, for in Ohio, for example, his decision would be regarded as in accord with those of its Supreme Court,<sup>10</sup> although in that State a more recent decision is in conformity with the rather generally accepted view stated above.<sup>11</sup>

The decisions establishing the rule as I have stated it above are usually based upon the theory that the person who issued the instrument intended that it should be paid to the one to whom he delivered it and when that has been accomplished, they hold that the paying bank

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8. *Anderson vs. Dundee St. Bk.*, 66 Hun (N. Y.) 613.

9. *Tolman vs. Am. Exchg. Natl. Bk.*, 22 R I. 462, 48 Atl. 480.

10. *Dodge vs. Bank*, 20 Ohio St. 234.

*Armstrong vs. Pomeroy Bk.*, 46 Ohio State 512.

11. *McHenry vs. Nat'l Bk.*, 85 Ohio State 203, 97 N. E. 395,  
38 L. R. A. (N. S.) 1111 and Note.

has carried out the drawer's intention.<sup>12</sup> And yet that is not altogether correct for, to arrive at such a conclusion, these courts must disregard the fact the impersonator was not actually the person the drawer had in mind and with whom he supposed himself to be dealing when he delivered the instrument.

Although the preponderance of opinion is as I have stated, yet, it ought not, by any means, to be regarded as a settled doctrine that when a check is delivered and paid to one who fraudulently impersonates another, the drawer must invariably bear the loss. But it is settled that a situation is then presented which requires the court to determine by whose direct negligence the loss was occasioned, that of the drawer by his failure to discover the fraudulent impersonation, or that of the paying bank, for its duty requires it to see to it, at its peril, that it pays the check according to the drawer's order to the party to whom, by its terms, it is payable. To be relieved from this responsibility, the bank must have made the usual inquiries respecting the identity of the presenter<sup>13</sup> and have used that degree of care and prudence which its relation to its depositor demands, a conclusion which is clearly indicated in all of the cases cited under this section. But where it appears that one of two innocent persons must suffer loss by the fraud or misconduct of a third, the loss must be borne by that one of them who first reposes confidence in the wrongdoer and commits the first oversight.<sup>14</sup>

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12. *Land Title & Trust Co. vs. Northwestern Nat. Bk.*, 196 Pa. 230.

*State vs. First Natl. Bk. of Montrose*, 17 Pa. Super. 256, Aff. 203 Pa. 69.

13. *Miners, Etc., Bk. vs. St. Louis Smelting Co. (Mo. A.)*, 178 S. W. 211, 212.

14. *Morse, Banks & Banking*, Vol. 2, Sec. 474, p. 115 and cases.

## SUBDIVISION II.

### CONSIDERATION.

Section	Section
24 Presumption of consideration.	27 When lien on instrument constitutes holder for value.
25 Consideration: what constitutes.	28 Effect of want of consideration.
26 What constitutes holder for value.	29 Liability of accommodation party.

Unlike any other simple contract, a negotiable instrument implies a consideration. This is because negotiable instruments are so important as a medium for carrying on business. They take the place of actual money, and bills, checks and notes are used as a means of settling commercial transactions between men much more frequently and to a greater extent than is actual money. Having many of the attributes of money they are safeguarded in every way consistent with their character and purpose in order that they may readily pass from hand to hand. Therefore, they are deemed to have been issued for a valuable consideration and this presumption continues until the contrary is made to appear. The provisions in the Act upon the subject are as follows:

**Presumption of consideration.** "SEC. 24. EVERY NEGOTIABLE INSTRUMENT IS DEEMED, *prima facie*, TO HAVE BEEN ISSUED FOR A VALUABLE CONSIDERATION: AND EVERY PERSON WHOSE SIGNATURE APPEARS THEREON TO HAVE BECOME A PARTY THERETO FOR VALUE."

The consideration is the thing of value which is given for the instrument. It does not necessarily mean money or goods, although these are most frequently the consideration for such instruments. It may in addition to these be anything of value, including a promise.



Consideration is usually stated to be either a thing given for a thing, a thing given for a promise, a promise given for a thing or a promise given for a promise, or instead of a "thing" there may be an act. (Also see Sec. 25.) It is always presumed, that is supposed and believed to be true without requiring proof, that a negotiable instrument has been issued for a valuable consideration. Any party to the instrument will be permitted to show that this presumption is not correct but until he does, it is deemed, *prima facie*, that is, taken for granted without proof, that it has been so issued; and likewise every person who has signed the instrument in any capacity is deemed, until the contrary is shown, to have done so for value. In an action upon the instrument it is not necessary that the person seeking to enforce it shall allege and prove that it is supported by a valuable consideration, or that all signatures were placed upon it for value.<sup>1</sup> The production of the instrument sufficiently supports that presumption in its favor. The person denying consideration must set up this plea in his answer to the suit and must prove it or at least offer evidence which tends to prove it,<sup>2</sup> whereupon his proof must be met and overcome by the person seeking to enforce the instrument, who is aided by this presumption in his favor.<sup>3</sup> If the testimony is evenly balanced, the presumption will prevail.<sup>4</sup> In the hands of any holder, the instrument will be presumed to have been issued or

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1. First Natl. Bk. vs. Stallo, 160 App. Div. (N. Y.) 702.

2. Hudson vs. Moon, 42 Utah, 377, 130 P. 774.  
Dawson vs. Wombles, 123 Mo. App. 340.

3. Huntington vs. Shute, 180 Mass. 371, 62 N. E. 380, 91 Am. S. R. 309.  
Ginn vs. Dolan, 81 Oh. St. 121, 90 N. E. 380, 91 Am. S. R. 309.  
Lombard vs. Byrne, 194 Mass. 236, 238.

4. Star Mills vs. Bailey, 140 Ky. 194, 201, 130 S. W. 1077, 140 A. S. R. 370.



negotiated for value by every person whose name appears upon it. Where the term "value" is used in the Act it means a valuable consideration (Sec. 191), and what constitutes a valuable consideration is defined in the next section.

**Consideration;** "SEC. 25. VALUE IS ANY CONSIDERATION SUFFICIENT TO SUPPORT A SIMPLE CONTRACT. AN ANTECEDENT OR PRE-EXISTING DEBT CONSTITUTES VALUE; AND IS DEEMED SUCH WHETHER THE INSTRUMENT IS PAYABLE ON DEMAND OR AT A FUTURE TIME."<sup>a</sup>

**what constitutes.**  
<sup>a</sup>**Wisconsin.**  
**Illinois.**

The amount and kind of consideration which must be given to support a promise upon a negotiable instrument is neither defined nor restricted by the Act. Any consideration which will support a simple contract will be sufficient to support a negotiable instrument. "Value" is by Sec. 191 declared to mean "valuable consideration" and this is understood in the law to be any benefit to the promisor of direct or indirect advantage gained by him, or any loss, detriment or inconvenience suffered by promisee.<sup>5</sup> It is not necessary that the consideration should pass from the person to whom the promise is given to the person who makes the promise, it being quite sufficient if it passes to another in whom the promisor is beneficially interested.<sup>6</sup> A merely nominal consideration is, however, usually insufficient to support the contract.<sup>7</sup>

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5. Brooklyn Union Bk. vs. Sullivan, 214 N. Y. 332, 108 N. E. 558.  
 Dalrymple vs. Wyker, 60 Ohio State, 108, 112, 53 N. E. 713.  
 Fink vs. Farmers Bank, 178 Pa. 154, 35 A. 636.  
 Bingham vs. Kimball, 33 Ind. 184.
  6. Brooklyn Union Bk. vs. Sullivan, 214 N. Y. 332, 108 N. E. 558.  
 Carter vs. Long, 125 Ala. 280, 28 S. 74.  
 Cobb vs. Heron, 180 Ill. 49, 54 N. E. 189.  
 Am. Boiler Co. vs. Foutham, 50 N. Y. Supp. 351.
  7. Hogg vs. Thurman, 90 Ark. 93, 117 S. W. 1070, 17 Ann. Cas. 383 and note.  
 Proctor vs. Cole, 104 Ind. 373, 3 N. E. 106, 4 N. E. 303.

Although insufficiency or failure of consideration may avoid a contract and may be a defense between immediate parties to a negotiable instrument, it will never avoid the instrument in the hands of a holder for value. It is therefore most important, if a note or bill is given out by the maker or acceptor which is not given for a full consideration, that is, if there is something yet to be given or done by the person to whom it is delivered or is payable, or if it is not to be fully paid at maturity, that this fact be clearly stated upon the instrument. (See Sec. 28.) And if an indorser places his name upon the instrument for any special purpose, or does not wish by his endorsement to make himself liable for the unconditional payment of the instrument, he must indicate that fact by appropriate words, so that all subsequent holders may be notified of his intention. (Sec. 38.)

An antecedent debt is declared by this section to constitute value. Such a debt is one which exists at the time when the negotiable instrument or indorsement is made, of which it forms the consideration and, in the sense in which it is used in the Act, it is intended to distinguish a debt which had been created before the time at which the instrument or indorsement of which it forms the consideration is made, even if it does not grow out of the same transaction, from one contracted immediately at the time of the issue or transfer of the instrument.<sup>s</sup> Thus it happens frequently that a bank will take a promissory note in settlement of an overdraft or, in a trade transaction, that an account, sometimes a very old account, one otherwise unenforceable, will be settled or extinguished by the giving or transfer of a promissory

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S. Murchison Nat. Bk. vs. Dunn Oil Mills, 150 N. C. 718.  
Israel vs. Gale, 174 U. S. 391.  
Ward vs. City Trust Co., 117 App. Div. (N. Y.) 130.  
Mehlinger vs. Harriman, 185 Mass. 245.

note or bill. In such a transaction the pre-existing debt upon the overdraft or the account will form the valid consideration for the instrument issued or transferred by the debtor to his creditor and it is good.

An instrument given in renewal of another which remains unpaid at maturity may be said to be based upon such a consideration and that it is good, is too obvious to require further comment or citation to authority. If an instrument is given in payment of or to secure the debt of another, it is supported by a valid consideration, provided the third person actually owes the debt<sup>9</sup> and the person making or transferring the instrument is beneficially interested in its payment or settlement.<sup>10</sup> And when checks or other instruments are exchanged without other consideration the one forms a valid consideration for the other.<sup>11</sup>

**What constitutes holder for value.** "SEC. 26. WHERE VALUE HAS AT ANY TIME BEEN GIVEN FOR THE INSTRUMENT, THE HOLDER IS DEEMED A HOLDER FOR VALUE IN RESPECT TO ALL PARTIES WHO BECOME SUCH PRIOR TO THAT TIME."

The holder of an instrument is a "holder for value" if he gives value or if value has been given for the instrument by any party prior to the time he became its holder. He is such as against all persons who became parties to the instrument before the negotiation at which value was given. Of course, any one claiming through him likewise becomes a holder for value, as against persons whose names were placed upon the instrument before value was given for it. (Sec. 58.) This section, therefore, means that if an instrument was issued without consideration

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9. First Nat. Bk. vs. Hix (Tex. Civ. App.), 164 S. W. 1035.

10. Agricultural Bk. vs. Robinson, 24 Me. 374, 41 Am. D. 385.

11. Matlock vs. Scheuerman, 51 Or. 49.

Miller vs. Marks (Utah), 148 P. 412, 417.

Rice vs. Granger, 131 N. Y. 149.

Franklyn Bk. vs. Roberts, 168 N. C. 473.

and passed through several hands without value having been given for it, while it is not enforceable in the hands of any holder if value has never been given, one giving value, or any one taking it after or through the one who gave value for it, whether for value or not, may enforce it against every person who became a party to the instrument before the transfer at which value was given.

**When lien on instrument constitutes holder for value.**

“SEC. 27. WHERE THE HOLDER HAS A LIEN ON THE INSTRUMENT, ARISING EITHER FROM CONTRACT OR BY IMPLICATION OF LAW, HE IS DEEMED A HOLDER FOR VALUE TO THE EXTENT OF HIS LIEN.”

A lien, in law, is a legal claim or hold on property as security for a debt. A negotiable instrument is, of course, property and one who holds it as collateral security for a debt or liability owing to him, while not being its owner, has a claim against the instrument and is considered to be a holder for value to the amount of his claim. He can enforce the instrument for the payment of his claim regardless of rights and duties of the parties among themselves and to each other, and even if value had not previously been given by any party, his lien constitutes value, and this is so even if the instrument was pledged for an antecedent debt.<sup>12</sup> (Sec. 25.)

The lien arising by contract needs no explanation. Its effect will be as expressed in the contract by which it is created. In the absence of an express contract a lien arises by implication of law out of those principles of right and justice which lie at the bottom of equitable jurisprudence as applied to the relations of the parties and the circumstances surrounding their dealings. It will arise from any just inference that by reason of advances or services, or other benefit rendered by one person to

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12. Brewster vs. Schrader, 26 Misc. (N. Y.) 480.



another, it was intended that a lien upon the instrument or its proceeds in his possession should be created. A bank advancing money to any one dealing with it is entitled to a lien upon all of his securities which it holds, and upon any general balance in its possession which may belong to him when these are not held or deposited for some distinct other purpose, or affected by some particular agreement inconsistent with this right.<sup>13</sup>

**Effect of want of consideration.** "SEC. 28. ABSENCE OR FAILURE OF CONSIDERATION IS A MATTER OF DEFENSE AS AGAINST ANY PERSON NOT A HOLDER IN DUE COURSE: AND PARTIAL FAILURE OF CONSIDERATION IS A DEFENSE PRO TANTO, WHETHER THE FAILURE IS AN ASCERTAINED AND LIQUIDATED AMOUNT OR OTHERWISE."

If no consideration whatever was given for the instrument, or if the consideration given was represented to be valuable at the time the instrument was made or transferred, but afterward proved to be substantially different and of less value than represented,<sup>14</sup> or if it should appear that an agreement upon which the instrument was based was not carried out,<sup>15</sup> or if the consideration for which the instrument was issued was not given,<sup>16</sup> or for any other reason there is a total absence or failure of consideration, the person affected by the failure of consideration may set this up as a matter of defense against any party not a holder in due course in an action upon the instrument and avoid its payment. And if there is a partial absence or failure of consideration he may set it up and be relieved "*pro tanto*," mean-

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13. Knapp vs. Cowell, 77 Iowa, 528, 42 N. W. 434.

Morse Banks & Banking, Sec. 324.

Talapoosa Co. Bk. vs. Wynn, 173 Ala. 272, 55 So. 1011.

Commonwealth vs. Wathen, 126 Ky. 573, 104 S. W. 364.

14. Shoe, Etc., Natl. Bk. vs. Wood, 142 Mass. 563, 8 N. E. 753.

Ferguson vs. Netter, 141 App. Div. (N. Y.) 274.

15. Brenneman vs. Furniss, 90 Pa. St. 186.

16. Agnew vs. Walden, 84 Ala. 502, 4 S. 672.



ing, for as much of the consideration as is absent or has failed. The partial absence or failure of consideration need not be ascertained and liquidated, which means known and positively determined, but, of course, it must be determinable. Neither of these defenses can, however, be used to defeat the instrument if it is in the hands of a holder in due course, nor do they affect the negotiability of the instrument.<sup>17</sup> It must be paid to such a holder regardless of the total or partial absence or failure of the consideration.

**Liability of accommodation party.**  
**Illinois.**                   “SEC. 29. AN ACCOMMODATION PARTY IS ONE WHO HAS SIGNED THE INSTRUMENT AS MAKER, DRAWER, ACCEPTOR, OR INDORSER,<sup>a</sup> WITHOUT RECEIVING VALUE THEREFOR, AND FOR THE PURPOSE OF LENDING HIS NAME TO SOME OTHER PERSON. SUCH A PERSON IS LIABLE ON THE INSTRUMENT TO A HOLDER FOR VALUE, NOTWITHSTANDING SUCH HOLDER AT THE TIME OF TAKING THE INSTRUMENT KNEW HIM TO BE ONLY AN ACCOMMODATION PARTY.”<sup>a</sup>

One who, for the benefit of another, signs his name to a negotiable instrument in any capacity mentioned in this section, and who receives nothing of value for or from the instrument, becomes an accommodation party.<sup>18</sup> Such a person will be deemed an accommodation party even if he is paid for the use of his name.<sup>19</sup> He has loaned his name and credit to the instrument to accommodate, that is, to aid some other persons and he may do so either as maker, drawer, acceptor or indorser. (See also Sec. 64.) In whatever capacity he may have become an accommodation party he is liable to any holder who has given value for the instrument even if that holder knew at the time of taking it that the maker, drawer, ac-

17. Dingman vs. Amsink, 77 Pa. St. 114.

18. Greenway vs. Wm. D. Orthwein Grain Co., 85 Fed. 536.  
 Young vs. Exchg. Bk., 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915, B. 148.

19. Morris County Brick Co. vs. Austin. 79 N. J. L. 273, 75 A. 550.

ceptor, or indorser placed his name upon the instrument as an accommodation party. But an accommodation party is liable upon the accommodation instrument to no person or party other than a holder for value. (See Secs. 26 and 27 for what constitutes holder for value.)

While this section fixes the liability of accommodation parties to the holder of the instrument, it is pertinent to say something, at this place, about the liability of accommodation parties to each other. In every case they are liable in the manner in which they agreed among themselves to be bound upon the instrument, or have among themselves an understanding amounting to an agreement.<sup>20</sup> If the accommodation parties are indorsers their liability, in the absence of an express agreement to the contrary, and unless they are joint indorsers, is in the order in which their names appear upon the instrument. They are liable in the successive order in which they indorsed and the doctrine of contribution does not apply.<sup>21</sup> Thus all are liable to the last, each is liable to those who signed after him and the first is liable to them all. (See Sec. 68.) The section is not applicable to corporations, which, as a rule, have not the power to execute accommodation paper.<sup>22</sup> The power to execute acceptances based upon the import and export of goods, newly created by the Federal Reserve Bank Act, will be explained in the introduction to Title II.

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20. *Law vs. Stewart*, 15 Fed. Cas. No. 8130, 3 Cranch. (C. C.) 411.  
*Noble vs. Beeman S. & Co.*, 65 Oregon 93; 131 Pac. 1006;  
46 L. R. A. (N. S.) 162.

21. *In re McCord*, 174 Fed. 72, 75.  
*McCune vs. Belt*, 45 Mo. 174, 178.  
*Barnet vs. Young*, 29 Ohio St. 7.  
*Porter vs. Huie*, 94 Ark. 333, 335; 126 S. W. 1069, 28 L. R.  
A. (N. S.) 1039.

22. *Jacobus vs. Jamestown Mantel Co.*, 211 N. Y. 154.  
*Owen & Co. vs. Storms*, 78 N. J. L. 154.

## SUBDIVISION III.

## NEGOTIATION.

Section	Section
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31 Indorsement; how made.	43 Indorsement where name is misspelled, etc.
32 Indorsement must be of entire instrument.	44 Indorsement in representative capacity.
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34 Special indorsement—indorsement in blank.	46 Place of indorsement; presumption as to.
35 Blank indorsement changed to special indorsement.	47 Continuation of negotiable character.
36 When indorsement restrictive.	48 Striking out indorsement.
37 Effect of restricting indorsement; rights of indorsee.	49 Transfer without indorsement; effect of.
38 Qualified indorsement.	50 When prior party may negotiate instrument.
39 Conditional indorsement.	
40 Indorsement of instrument payable to bearer.	
41 Indorsement where payable to two or more persons.	

**What constitutes negotiation.**

“SEC. 30. AN INSTRUMENT IS NEGOTIATED WHEN IT IS TRANSFERRED FROM ONE PERSON TO ANOTHER IN SUCH MANNER AS TO CONSTITUTE THE TRANSFEREE THE HOLDER THEREOF. IF PAYABLE TO BEARER, IT IS NEGOTIATED BY DELIVERY; IF PAYABLE TO ORDER IT IS NEGOTIATED BY THE INDORSEMENT OF THE HOLDER COMPLETED BY DELIVERY.”

To negotiate the instrument means to issue it or transfer it after it has been issued, and by this section it is provided that to constitute a negotiation, the issue or transfer must have been made in such a manner as to make the transferee the holder of the instrument.<sup>1</sup> One becomes the holder of an instrument by the fact alone that it has been given into his possession by indorse-

1. Bank of Commerce vs. Farmers & Merch. Bk., 87 Nebr. 841, 843. Aurora St. Bk. vs. Hayes, Eames El. Co., 88 Nebr. 187. Scotland Co. Bk. vs. Holm, 146 Mo. App. 699.

ment and delivery, or delivery alone at its inception, or when indorsement is not required. The delivery must be made for the purpose of giving the instrument, together with all its incidents into the rightful possession of the transferee (Sec. 15 and Sec. 191), either as owner or as the authorized representative of its owner, or in order to secure a debt or liability owing to him. In the latter case he is more than the representative of its owner. He has an interest in the instrument to the amount of his lien (see Sec. 27). A transfer which does not meet these requirements is not a negotiation, does not pass the title to the instrument, and does not constitute the person who has taken the instrument without these qualifications a holder within the meaning of this Act. If the instrument is payable to bearer, the mere delivery by one holder to another without indorsement constitutes its negotiation. If it is payable to order the holder must write his name upon the back of instrument thereby indorsing it, and he must complete the negotiation by delivery. How the indorsement must be made is prescribed by the next section.

If a holder in possession of the instrument has indorsed it but does not complete the negotiation by delivery, he may erase his name; and if an instrument is found in the hands of one who had made an indorsement upon it which, if accompanied by delivery, would have amounted to a negotiation, it will be presumed that the negotiation was never completed.<sup>2</sup>

**Indorsement;**

**how made.**

**Illinois.**

“SEC. 31. THE INDORSEMENT MUST BE WRITTEN ON THE INSTRUMENT ITSELF, OR UPON A PAPER ATTACHED THERETO. THE SIGNATURE OF THE INDORSER, WITHOUT ADDITIONAL WORDS, IS A SUFFICIENT INDORSEMENT.”

2. Richards vs. Darst, 51 Ill. 140.

McCormick vs. Eckland, 11 Ind. 293.



The place for an indorser's signature is upon the back of the instrument. If there is no room there a piece of paper may be securely attached to it and the indorsement made upon that. This is called an "*allonge*." It may be made upon the face of the instrument, but if a signature is placed there the indorser must use words at his signature which clearly manifest his intention to transfer the instrument,<sup>3</sup> otherwise he may be mistaken for and held to be liable upon the instrument as a primary party. The rights of the primary parties, as the maker of a promissory note, and an indorser are very different, as is their liability upon the instruments they sign, and too great care cannot be exercised to distinguish plainly the manner in which one who signs the instrument elsewhere than upon its back or an attached piece of paper, intends to be bound by his signature. One who intends to assume no greater liability than as indorser or does not intend to limit his liability as such, need only write or stamp his name upon the back of the instrument or an attached paper to become an indorser within the meaning of this Act, the contract of indorsement being as fully expressed by the signature alone as it would be if it had been written out in full upon the instrument.

**Indorsement  
must be of entire  
instrument.**

"SEC. 32. THE INDORSEMENT MUST BE AN INDORSEMENT OF THE ENTIRE INSTRUMENT. AN INDORSEMENT, WHICH PURPORTS TO TRANSFER TO THE INDORSEE A PART ONLY OF THE AMOUNT PAYABLE, OR WHICH PURPORTS TO TRANSFER THE INSTRUMENT TO TWO OR MORE INDORSEES SEVERALLY, DOES NOT OPERATE AS A NEGOTIATION OF THE INSTRUMENT. BUT WHERE THE INSTRUMENT HAS BEEN PAID IN PART, IT MAY BE INDORSED AS TO THE RESIDUE."

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3. Farmers Trust Co. vs. Schenuit, 83 Ill. A. 267.  
Walton vs. Williams, 44 Ala. 347:  
Perry vs. Bray, 68 Ga. 293.  
Com. vs. Butterick, 100 Mass. 12.



The holder of a negotiable instrument cannot transfer a part only of it by indorsement. If he attempts to do so, or if he attempts to transfer the whole instrument by making part payable to one person and part to another, in order that each may own and have a right to receive a separate part of the amount due, this will not operate as a negotiation and has been held to destroy the negotiability of the instrument.<sup>4</sup> Such an indorsement will only operate to enable the persons to whom the indorser so transfers the instrument to hold it as security for the amounts they are to receive out of its payment but it does not constitute either of them a "holder" within the meaning of this Act. The indorsement, to amount to a negotiation, must be of the entire instrument.<sup>5</sup> But if there has been partial payment made, the instrument may be indorsed as to the balance remaining due and this would be an entire and complete indorsement and negotiation if followed by delivery.

**Kinds of indorsement.**

"SEC. 33. AN INDORSEMENT MAY BE EITHER SPECIAL OR IN BLANK; AND IT MAY ALSO BE EITHER RESTRICTIVE OR QUALIFIED, OR CONDITIONAL."

Two kinds of indorsement are named in this Act; a special indorsement, which is defined in Sec. 34, and an indorsement in blank which is defined in Secs. 34 and 35. These indorsements may be either restrictive, as is explained in Secs. 36 and 37, qualified, as defined in Sec. 38, or conditional, as explained in Sec. 39. Each has its distinct effect upon the instrument and serves a particular purpose.

**Special indorsement; indorsement in blank.**  
<sup>a</sup>Wyoming.

"SEC. 34. A SPECIAL INDORSEMENT SPECIFIES THE PERSON TO WHOM, OR TO WHOSE ORDER, THE INSTRUMENT IS TO BE<sup>a</sup> PAYABLE; AND THE INDORSEMENT OF SUCH

4. Goldman vs. Blum, 58 Tex. 630.

Lindsay vs. Price. 33 Tex. 280, 282.

5. Barkley vs. Muller. 164 App. Div. 381, 149 N. Y. S. 620.  
 Erwin vs. Lynn, 16 Oh. St. 539.

INDORSEE IS NECESSARY TO THE FURTHER NEGOTIATION OF THE INSTRUMENT. AN INDORSEMENT IN BLANK SPECIFIES NO INDORSEE, AND AN INSTRUMENT SO INDORSED IS PAYABLE TO BEARER, AND MAY BE NEGOTIATED BY DELIVERY.”

The special indorsement, sometimes called a “full indorsement” is an order, written on the instrument over his signature by the indorser, directing it to be paid to a person whom he names, or to his order. It is not necessary that the words “or order” be used in order to constitute the person named in a special indorsement a “full indorsee,” and unless words are used prohibiting further negotiation he will take the instrument with all its incidents including full negotiability and may transfer it to another by indorsement.<sup>6</sup> But it is necessary that the person to whom the instrument is to be transferred by the indorsement shall be named in it. If he is not designated, the indorsement is not special, although it may have been written thus: “Pay to the order of .....”<sup>7</sup> When a special indorsement is used the instrument is payable to the person named in the indorsement or some one to be named by him. If he desires the instrument to be paid to another he must himself indorse it or authorize some one to do so for him, unless the instrument is, upon its face, payable to the bearer (Sec. 40), whereupon he becomes a party to the instrument in the capacity of indorser.

An indorsement in blank differs from this. This indorsement is made by the holder by merely writing his name upon the instrument without designating anyone to whom he desires it to be paid. By that act he assumes the same liability as by special indorsement (See Sec. 66), but if the instrument is one originally payable to

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6. *Fawcett vs. Natl. L. Ins. Co.*, 97 Ill. 11, 37 Am. R. 95.  
*Hodges vs. Adams*, 19 Vt. 74, 46 Am. D. 181.

7. *State vs. Hinton*, 56 Ore. 428, 109 Pac. 24.  
*Adams vs. Smith*, 35 Me. 324.

order it then becomes payable to bearer and may be negotiated by delivery from one subsequent holder to another without indorsement, until it again becomes specially indorsed.

Since only those persons whose names appear upon the instrument are liable upon it (Sec. 18), it is desirable, by reason of the additional security which will be given to the instrument, that the transferee, that is the person who is taking it, require the person who is transferring it to him to indorse the instrument. Section 49 of the Act gives to the holder the right to require the indorsement of his transferrer if the instrument is one payable to order. One who transfers an instrument by mere delivery incurs no liability except to the extent of the warranties which by Sec. 65 are implied from a negotiation by delivery.

**Blank  
indorsement  
changed to  
special  
indorsement.**

**“SEC. 35. THE HOLDER MAY CONVERT A  
BLANK INDORSEMENT INTO A SPECIAL IN-  
DORSEMENT BY WRITING OVER THE SIGNA-  
TURE OF THE INDORSER IN BLANK ANY CON-  
TRACT CONSISTENT WITH THE CHARACTER OF  
THE INDORSEMENT.”**

If an indorser has made a blank indorsement (Sec. 34) upon the instrument, whoever has it as holder, may write over the signature of the indorser in blank the name of any person to whom, or to whose order, he desires the instrument to be paid. He then need not indorse it himself but by this act, followed by delivery, he will have transferred the instrument to the person he has named without making himself a party to the transfer<sup>8</sup> and, unless the instrument was originally payable to bearer, he thereby changes its character from one payable to bearer to an instrument payable to order. (See Sec. 40.) In accomplishing this the holder may write over the

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8. Evans vs. Gee, 11 Pet. (U. S.) 78, 83.

blank indorsement any words consistent with the character of the indorsement and which express the real agreement of the blank indorser, but he may not write any words that will change the character of the indorser's liability or impair or take away any of his legal rights or defenses.<sup>9</sup> It has also been held, however, that if the words written over the blank indorsement are made to express a contract different from that which was intended, it may be reformed.<sup>10</sup>

**When  
indorsement  
restrictive.**

“SEC. 36. AN INDORSEMENT IS RESTRICTIVE WHICH EITHER—

1. PROHIBITS THE FURTHER NEGOTIATION OF THE INSTRUMENT; OR

2. CONSTITUTES THE INDORSEE THE AGENT OF THE INDORSER, OR

3. VESTS THE TITLE IN THE INDORSEE IN TRUST FOR OR TO THE USE OF SOME OTHER PERSON.

BUT THE MERE ABSENCE OF WORDS IMPLYING POWER TO NEGOTIATE DOES NOT MAKE AN INDORSEMENT RESTRICTIVE.”

A restrictive indorsement is one which forbids the further negotiation of the instrument or restricts the manner of its transfer. One form of this indorsement is accomplished by the indorser by writing over his signature words which direct payment to a person named and to him only. The person named has then no right to negotiate the instrument further and no other person will be entitled to receive payment upon it. Such an indorsement implies a promise by the indorser that he will pay the instrument if the maker or acceptor does not and if he is called upon to do so, but that he will be liable and will pay it only to the person named in his indorsement.

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9. *Columbia Finance Co. vs. Purcell*, 146 Fed. 85.  
*Hood vs. Robbins*, 98 Ala. 484, 13 S. 574.  
*Jordan vs. Long*, 109 Ala. 414, 19 S. 447.

10. *Newton vs. Bramlett*, 55 Ill. A. 661.  
*Sylvester vs. Downer*, 20 Vt. 355, 49 Am. D. 786.



The most common use of the restrictive indorsement however, and the one chiefly contemplated by the convention which framed the Act, is that which makes impossible the further negotiation of instruments indorsed for collection. If an indorser writes over his signature an order to pay the instrument to some person whom he names as his agent as, for example, if he indorses the instrument to a bank for collection and credit to his account, such an indorsement indicates that the person or bank taking the instrument through it does so in the name of and acting on behalf of the restrictive indorser who does not intend to part with his title to the instrument.<sup>11</sup> Under this form of indorsement the owner of the instrument will be able to control it or its proceeds until it is returned to him or paid and may intercept the proceeds in the hands of an intermediate agent.<sup>12</sup> This form of restrictive indorsement does not entirely destroy the negotiable character of the instrument, but affects it in the manner described in Sec. 37.

An indorsement which names one person to take the title in trust for another or for another's use or benefit, is likewise restrictive and it, likewise, does not entirely destroy the further transferability of the instrument. In each form proper language must be used to show that the indorsement is restrictive, for the fact alone that an indorser omits words which give to or imply in the indorsee the power to negotiate the instrument further, does not make it so. Thus, if the indorsement is special

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11. *Chicago First Nat. Bk. vs. Reno County Bk.*, 3 Fed. 257.  
*Butchers & Drovers Bk. vs. Hubbell*, 117 N. Y. 384.  
*Freeman's Bk. vs. Natl. Tube Wks.*, 151 Mass. 413.

12. *Bank of America vs. Waydell*, 187 N. Y. 115. Where indorsement in blank accompanied by letter stating draft had been sent for collection.

*Manufacturers Natl. Bk. vs. Continental Bk.*, 148 Mass. 553.  
*First Natl. Bk. vs. First Natl. Bk.*, 76 Ind. 561.



and the words "or order" are omitted the indorsee may nevertheless negotiate the instrument. (See Secs. 34 and 47.)

**Effect of  
restricting  
indorsement;  
rights of  
indorsee.  
Illinois.**

"SEC. 37. A RESTRICTIVE INDORSEMENT  
CONFERS UPON THE INDORSEE THE RIGHT—

1. TO RECEIVE PAYMENT OF THE INSTRUMENT;

2. TO BRING ANY ACTION THEREON THAT  
THE INDORSER COULD BRING.<sup>a</sup>

3. TO TRANSFER HIS RIGHTS AS SUCH INDORSEE,<sup>a</sup> WHERE  
THE FORM OF THE INDORSEMENT AUTHORIZES HIM TO DO SO.

BUT ALL SUBSEQUENT INDORSEES ACQUIRE ONLY THE TITLE  
OF THE FIRST INDORSEE UNDER THE RESTRICTIVE INDORSE-  
MENT."<sup>a</sup>

The indorsee who holds under a restrictive indorsement has the right to receive payment of the instrument and consequently has the right to compel its payment, and a discharge given by him for payment will be good. He has the right to bring any action upon the instrument which the indorser who made the restrictive indorsement might bring and he can transfer his rights as such indorsee unless the form of the instrument or the restrictive indorsement prohibits it.<sup>13</sup> But, while he can transfer such rights as are given him by the indorsement, all indorsees coming after him take from and through him only such title in the instrument and its proceeds as he acquired under the restrictive indorsement and the form of the indorsement by which the instrument was transferred to him is notice to all subsequent indorsees of the limited right of the restrictive indorsee to negotiate the instrument. One who receives an instrument indorsed to him for collection has therefore no

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13. Smith vs. Bayer, 46 Ore. 143.

Schmidt vs. Pegg, 172 Mich. 160.

Craig vs. Palo Alto Stock Farm, 16 Idaho, 701.

Gleason vs. Thayer, 87 Conn. 248.

power to sell it and cannot convey a good title if he does.<sup>14</sup>

Sub-section 2, it has been said, is unjust in that if a person taking the instrument in trust for another under that form of restrictive indorsement does so for value, he does not secure the right to bring an action upon it against his immediate indorser. However, since his indorser had the right to bring an action against all persons who preceded him upon the instrument and transferred this right to his transferee, he must be regarded as having thereby included himself as one against whom the holder by restrictive indorsement may bring an action to enforce the instrument if he fails to qualify his indorsement, since by no other form of indorsement can he make himself a mere assignor of the title, as will be seen from the following section.

**Qualified  
indorsement.**

“SEC. 38. A QUALIFIED INDORSEMENT CONSTITUTES THE INDORSER A MERE ASSIGNOR OF THE TITLE TO THE INSTRUMENT. IT MAY BE MADE BY ADDING TO THE INDORSER'S SIGNATURE THE WORDS “WITHOUT RECOURSE,” OR ANY WORDS OF SIMILAR IMPORT. SUCH AN INDORSEMENT DOES NOT IMPAIR THE NEGOTIABLE CHARACTER OF THE INSTRUMENT.”

When a person indorses a negotiable instrument and writes over or under, before or after his signature the words “without recourse” or “without recourse on me” he makes what is called a qualified indorsement. He is not required to use these words but may use others which mean the same thing or have the same effect. Or he may, if he chooses, write over his signature words of any qualification or limitation that he may wish to impose, and his liability to subsequent holders will be no greater or less than that which he assumes or to which

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14. *Peoples & Drovers Bk. vs. Craig*, 63 Oh. St. 374, 59 N. E. 102, 81 Am. S. Rep. 639, 52 L. R. A. 872.

he limits himself by his words of qualification.<sup>15</sup> These must be words which clearly indicate that he intends to limit his liability. He may also qualify his liability by enlarging its limits, as he does when he adds a waiver of the usual requirements of demand and notice of non-payment.<sup>16</sup> (See Secs. 5, 82, 109, 110.) The place where the qualification is written upon the instrument is not of importance and it will operate if it can be clearly identified with the indorser's signature.<sup>17</sup> Each indorser must himself write the qualifying words at his own signature in order that there can be no doubt of their application to him. When one indorser has qualified his signature, subsequent indorsers placing theirs under his cannot claim that they signed the instrument subject to the same qualification, unless when signing they clearly indicate their intention to do so by appropriate words.<sup>18</sup>

A qualified indorsement upon the instrument does not interfere with its negotiation. The indorser who limits his indorsement by the qualifying words "without recourse" merely transfers the title to the instrument as it was when it came to him, and he does not become liable to his transferee, or any subsequent holder, except to the extent of the warranties which by Section 65 are implied from this form of indorsement. (See Sec. 65.)

**Conditional  
indorsement.**

"SEC. 39. WHERE AN INDORSEMENT IS  
CONDITIONAL, A PARTY REQUIRED TO PAY THE  
INSTRUMENT MAY DISREGARD THE CONDITION AND MAKE PAY-  
MENT TO THE INDORSEE OR HIS TRANSFeree, WHETHER THE

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15. *Fassin vs. Hubbard*, 55 N. Y. 465, 470.  
*Markley vs. Corey*, 108 Mich. 184.
  16. *Allen vs. Rightmire*, 20 Johns. 365, 11 Am. D. 288.  
*Hatcher vs. Chambersburg Bank*, 79 Ga. 542, 5 S. E. 109.
  17. *Doom vs. Sherwin*, 20 Colo. 234, 38 P. 56.  
*Fitchburg Bk. vs. Greenwood*, 2 Allen (Mass.) 434.  
*Corbett vs. Fetzner*, 47 Nebr. 269, 66 N. W. 417.  
*Goolrick vs. Wallace*, 154 Ky. 596, 157 S. W. 920, 49 L. R. A. N. S. 789.
  18. *Doom vs. Sherwin*, 20 Colo. 234, 38 P. 56.

CONDITION HAS BEEN FULFILLED OR NOT. BUT ANY PERSON TO WHOM AN INSTRUMENT SO INDORSED IS NEGOTIATED, WILL HOLD THE SAME, OR THE PROCEEDS THEREOF, SUBJECT TO THE RIGHTS OF THE PERSON INDORSING CONDITIONALLY."

While the instrument must contain the unconditional promise or order of the person who originally issues it to pay it (Sec. 1), the holder may transfer it by indorsement so that it shall become payable to the indorsee only upon the happening of some condition which he names. The indorser may do this by indicating at his signature the condition upon which it is to become payable to the person to whom he negotiates it. One taking an instrument which is indorsed in this manner may in turn transfer it to another, but when the instrument is paid, the holder who receives payment must hold the proceeds subject to the rights of that party who made the conditional indorsement. But the one who is required to pay the instrument is not bound by the condition imposed by the indorser, whether it is fulfilled or not. He may disregard the condition and pay the instrument to the holder at maturity and his payment will discharge his obligation. He is not bound by the conditional indorsement to see that the proceeds of the instrument are applied in accordance with the condition imposed by the indorser. It will be the duty of the person to whom he pays the instrument to see to that.

**Indorsement of instrument payable to bearer.**  
"Illinois.

"SEC. 40. WHERE AN INSTRUMENT, PAYABLE TO BEARER, IS INDORSED SPECIALLY, IT MAY NEVERTHELESS BE FURTHER NEGOTIATED BY DELIVERY; BUT THE PERSON INDORSING SPECIALLY IS LIABLE AS INDORSER TO ONLY SUCH HOLDERS AS MAKE TITLE THROUGH HIS INDORSEMENT."

If an instrument which is upon its face expressly made payable to bearer becomes specially indorsed during its negotiation, that is, if it obtains an indorsement which specifies the person to whom or to whose order it is to



be payable, it may, nevertheless, be transferred by delivery. In other words, it is not necessary that such an instrument shall be indorsed by the person named in the special indorsement. That person or any subsequent holder may transfer it without indorsement if the transferee will accept it so. But the person who indorsed it specially will enjoy a certain immunity from liability, that is, he will be liable upon the instrument only to those persons who make title, which means who constitute some other person the owner of the instrument, through his special indorsement. This, of course, means the one named in the special indorsement and those subsequent holders to whom that one indorses the instrument and who in turn make title to others through their own indorsements, and does not include persons who obtain the title to the instrument by mere delivery without the indorsement of the person named in his special indorsement. (Also see Sec. 67.)

The effect of this section is, therefore, that an instrument originally payable to bearer which becomes specially indorsed may continue to be negotiated without further indorsement, but the liability of the special indorser is transmitted only to such person or persons who made title through his indorsement. It follows from this section that a restrictive indorsement upon an instrument originally payable to bearer would not be effective. But if such an instrument so indorsed is negotiated in breach of faith by the indorsee, the restrictive indorsement would be deemed to be notice of a defect in the holder's title. (Secs. 55 and 56.)

A distinction is made in this section between an instrument which is originally payable to bearer and one originally payable to order which becomes payable to bearer by blank indorsement. The first, though it may



become specially indorsed, does not require a blank indorsement to again become an instrument payable to bearer. It continues to be such notwithstanding the special indorsement. But the second, originally payable to order becomes payable to bearer when the only or last indorsement upon it is an indorsement in blank (Sec. 9-5), and does require to again be specially indorsed in order to resume its former character as an order instrument after it has been changed by blank indorsement to one payable to bearer. (See Sec. 34.)

#### Indorsement

where payable to  
two or more  
persons.

<sup>a</sup>Wisconsin.

THE OTHERS.”

“SEC. 41. WHERE AN INSTRUMENT IS PAYABLE TO THE ORDER OF TWO OR MORE PAYEES, OR<sup>a</sup> INDORSEES WHO ARE NOT PARTNERS, ALL MUST INDORSE, UNLESS THE ONE INDORSING HAS AUTHORITY TO INDORSE FOR

When an instrument is expressly made payable to two or more persons who are not partners all who are named as payees must indorse in order to negotiate it, unless one who does it for all acts by the authority of the others. This authority need not be expressly given but may be implied from the circumstances under which the instrument was issued or transferred. It has been held, for example, that where two persons sign upon its face an instrument which recites that it is payable to “myself” or order, the one having signed for the accommodation of the other, and it was intended that the latter alone should receive the proceeds of the instrument, a transfer upon his indorsement alone will vest the holder with title enforceable against both.<sup>19</sup> When the instrument is made payable by indorsement to two or more persons who are not partners, all must indorse it unless one has authority to act for all, but if two or more persons named as payees or indorsees are partners in a trading part-

19. First Natl. Bank vs. Fowler, 36 Ohio St. 524.

nership any partner has the right, in a partnership transaction, even in the absence of express authority, to indorse the instrument in the name of the partnership and all partners will be bound by his act.<sup>20</sup>

**Effect of instrument drawn or indorsed to a person as cashier.**  
**So. Dakota.** “SEC. 42. WHERE AN INSTRUMENT IS DRAWN OR INDORSED TO A PERSON AS “CASHIER” OR OTHER FISCAL OFFICER OF A BANK OR CORPORATION, IT IS DEEMED PRIMA FACIE TO BE PAYABLE TO THE BANK OR CORPORATION OF WHICH HE IS SUCH OFFICER, AND MAY BE NEGOTIATED BY EITHER<sup>a</sup> THE INDORSEMENT OF THE BANK OR CORPORATION, OR THE INDORSEMENT OF THE OFFICER.”

If an instrument is drawn or is indorsed so that it is payable to a cashier or other “fiscal officer of a bank or corporation” it is taken to be payable to the bank or corporation of which he is such officer, until the contrary is shown. A fiscal officer is one whose duties pertain to the finances of the bank or corporation of which he is an officer. Such an instrument is payable to the bank or corporation of which the person named is an officer and may be negotiated by the indorsement of the bank or corporation though made upon it by another of its duly authorized officers, or it may be negotiated by the indorsement of the officer named in the instrument. In either case, the indorsement, if made by another by authority of the bank or corporation, or if made by such officer, is considered to be the act of the bank or corporation named and is good. The indorsement for transfer by a public officer of an instrument which carries notice upon its face that it is the property of the corporation, will not convey the title to the instrument if the officer

20. Drexler vs. Smith, 30 Fed. 754.

Fulton vs. Loughlin, 118 Ind. 286, 20 N. E. 796

Moorehead vs Gilmore, 77 Pa. St. 118, 18 Am. Rep. 435.

Gansevoort vs. Williams, 14 Wendell (N. Y.) 138.

negotiates it for his private use.<sup>21</sup> As to transfer by or payment to officers of other corporations or public officers, see Sec. 8, Sub-sec. 6, and Sec. 21.

**Indorsement**

where name is  
misspelled,  
et cetera.

“SEC. 43. WHERE THE NAME OF A PAYEE OR INDORSEE IS WRONGLY DESIGNATED OR MISSPELLED, HE MAY INDORSE THE INSTRUMENT AS THEREIN DESCRIBED, ADDING, IF HE THINK FIT, HIS PROPER SIGNATURE.”

If the name of the payee or indorsee is misspelled or he is incorrectly designated or described, he may indorse the instrument in the manner in which his name is misspelled or by his wrong designation.<sup>22</sup> He is not obliged to but he may, in addition thereto, indorse it by his proper name or proper designation, if he think fit, and this is usually done. Indorsement by the person named in his proper name or by his proper designation is, of course, good although he neglects to indorse by the misspelled name or improper designation or description. If one does business in the name of a company and the instrument is made payable to the company name, indorsement in his own name will be sufficient to transfer the title.<sup>23</sup>

**Indorsement**

in representative  
capacity.

“SEC. 44. WHERE ANY PERSON IS UNDER OBLIGATION TO INDORSE IN A REPRESENTATIVE CAPACITY, HE MAY INDORSE IN SUCH TERMS AS TO NEGATIVE PERSONAL LIABILITY.”

When an instrument requires the indorsement of a person who is not a party to it except as the representative of another, he may indorse it in any way he desires in order to show that he does it in his representative capacity, and that he does not intend to assume any personal liability upon the instrument. No particu-

21. Quincy Mut. Fire Ins. Co. vs. International Trust Co., 217 Mass. 370.

22. Hunt vs. Stewart, 7 Ala. 525.

23. Bryant vs. Eastman, 7 Cushing (Mass.) 111.

lar form of words is required. Any which will convey his meaning will be sufficient.<sup>24</sup>

**Time of  
indorsement;  
presumption.**

“SEC. 45. EXCEPT WHERE AN INDORSEMENT BEARS DATE AFTER THE MATURITY OF THE INSTRUMENT, EVERY NEGOTIATION IS DEEMED *prima facie* TO HAVE BEEN EFFECTED BEFORE THE INSTRUMENT WAS OVERDUE.”

The date which an indorsement bears is presumed to be the date when it was made. Every undated indorsement is presumed, until the contrary appears, to have been made and every negotiation to have been effected before the instrument became past due. This presumption may be overcome and, in a controversy, the true date shown by proof.<sup>25</sup> The rights and liabilities of indorsers before and after maturity differ in very important respects and if an indorsement is placed upon an instrument after its maturity, it ought to be dated, for a date often becomes very important in determining the rights of the interested parties. (See Sec. 52.)

**Place of  
indorsement;  
presumption.**

“SEC. 46. EXCEPT WHERE THE CONTRARY APPEARS, EVERY INDORSEMENT IS PRESUMED *prima facie* TO HAVE BEEN MADE AT THE PLACE WHERE THE INSTRUMENT IS DATED.”

The place where an indorsement is made sometimes becomes important in fixing the rights or the liability of the indorser, for the reason that each negotiation is regarded as a distinct and new contract upon the terms of the instrument or upon such modifications as may have been imposed at any negotiation.<sup>26</sup> If the indorsement is made at a place other than that where the instrument is dated, particularly if made in another State whose laws may yet be different from those of the State where the

24. Chelsea Exchg. Bk. vs. First U. P. Church, 89 Misc. (N. Y.) 616, 620.

25. Cedar Rapids Natl. Bk. vs. Bashara, 39 Okla. 432.

26. Smith vs. Caro & Brown, 9 Oregon, 278.  
Freese vs. Brownell, 35 N. J. L. 285.



instrument was made, it ought to indicate that fact.<sup>27</sup> All indorsements are presumed to have been made at the place where the instrument is dated unless the contrary appears or is shown. This presumption is conclusive in favor of any holder in due course who had no notice to the contrary before taking the instrument and the contrary cannot be shown as to him even if true, but it has been held, as to others, that an undated indorsement is to be regarded as having been made at the place of residence of the indorser.<sup>28</sup>

**Continuation of negotiable character.** "SEC. 47. AN INSTRUMENT NEGOTIABLE IN ITS ORIGIN CONTINUES TO BE NEGOTIABLE UNTIL IT HAS BEEN RESTRICTIVELY INDORSED OR DISCHARGED BY PAYMENT OR OTHERWISE."

An instrument which is negotiable when first issued continues to be so until it has been restrictively indorsed or until it has been discharged. It continues to be negotiable even after maturity.<sup>29</sup> The only form of restrictive indorsement which entirely destroys its negotiable character is that which forbids its further negotiation. (Sec. 36.) A restrictive indorsement is made in the manner described in Section 36 and confers upon the holder such rights as are set forth in Section 37. The discharge of the instrument may be effected by payment or in any of the ways enumerated under Sec. 119.

**Striking out indorsement.** "SEC. 48. THE HOLDER<sup>a</sup> MAY AT ANY TIME STRIKE OUT ANY INDORSEMENT WHICH IS NOT NECESSARY TO HIS TITLE. THE INDORSER WHOSE INDORSEMENT IS STRUCK OUT, AND ALL INDORSERS SUBSEQUENT TO HIM, ARE THEREBY RELIEVED FROM LIABILITY ON THE INSTRUMENT."

The holder, whether he be or be not himself an indorser, may strike out any indorsement upon the instru-

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27. *Chemical Natl. Bk. vs. Kellogg*, 183 N. Y. 92, 75 N. E. 1103, 111 Am. S. R. 717, 2 L. R. A. N. S. 299, 5 Ann. Cas. 158.  
*Mackintosh vs. Gibbs* (N. J.), 74 Atl. 708.

28. *Simpson vs. White*, 40 N. H. 540.

29. *Oakdale Mfg. Co. vs. Clarke*, 29 R. I. 192, 199, 69 Atl. 681.



ment which is not necessary to prove his ownership of the instrument. Those indorsements necessary to a holder's title are the indorsements of the payee and of subsequent special indorsers and persons named in any special indorsements through whom the holder must trace his ownership.<sup>30</sup> The indorsement of the payee should never be struck out, and, unless the payee has indorsed in blank, the indorsement of all persons named in special indorsements will be necessary to prove the holder's title. But when a blank indorsement appears upon the instrument, whether it be the indorsement of the payee or any subsequent indorser, the holder may strike out all subsequent indorsements and show title under that blank indorsement.<sup>31</sup> And he may do this before or at the trial of an action upon the instrument.<sup>32</sup>

Such indorsements as are necessary to show how the holder could or did acquire title to the instrument are usually readily ascertainable from the manner in which they are made upon the instrument but the holder must exercise considerable care in striking out the names of those persons upon whom he does not intend to rely. Parties whose names are struck out cease to be liable upon the instrument as do all those who indorsed subsequent to that one or those whose names are thus eliminated. The indorsements of all persons named in special indorsements may be necessary in order to show the holder's title to the instrument,<sup>32</sup> and will be necessary if there is no blank indorsement upon it. The occasion for striking out indorsements does not usually arise until the instrument has been re-negotiated to a party who

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30. Porter vs. Cushman, 19 Ill. 572.

31. Vanarsdale vs. Hax, 107 Fed. 878.

New Haven Mfg. Co. vs. New Haven Pulp & Board Co., 76 Conn. 126.

Ensign vs. Fogg, 177 Mich. 317.

32. Carter vs. Butler, 264 Mo. 306.

has previously negotiated it, or it returns to the holder after an ineffectual attempt to collect it during which it has obtained indorsements which are in no way necessary to establish his relationship to the parties against whom he seeks to enforce it. (See Sec. 121.) The holder may then strike out his own indorsement even though it be restrictive.<sup>33</sup>

**Transfer  
without  
indorsement;  
effect of.**

<sup>a</sup>Illinois,  
**Missouri.**  
<sup>b</sup>Colorado,  
**Alabama.**  
<sup>c</sup>Wisconsin.

“SEC. 49. WHERE THE HOLDER OF AN INSTRUMENT PAYABLE TO HIS ORDER TRANSFERS IT FOR VALUE WITHOUT INDORSING IT, THE TRANSFER VESTS IN THE TRANSFEREE SUCH TITLE AS THE TRANSFEROR HAD THEREIN, AND THE TRANSFEREE ACQUIRES, IN ADDITION, THE RIGHT<sup>a</sup> TO HAVE THE INDORSEMENT OF THE TRANSFEROR.<sup>b</sup> BUT FOR THE PURPOSE OF DETERMINING WHETHER THE TRANSFEREE IS A HOLDER IN DUE COURSE, THE NEGOTIATION TAKES EFFECT AS OF THE TIME WHEN THE INDORSEMENT IS ACTUALLY MADE.”<sup>c</sup>

The transfer of an instrument payable to order without the indorsement of the payee or the indorsee named in the special indorsement will convey the title to the holder but it is not a negotiation. While the transferee acquires title to the instrument by such a transfer and may bring an action upon it, he does not acquire with its possession the status of a holder in due course (Sec. 59) until he secures the indorsement of his transferor.

When, upon the transfer of such an instrument, the transferor neglects to indorse it before its transfer, he should be required to do so as quickly as possible if his indorsement was contemplated. Until it is obtained the transferee will hold the instrument subject to all the defenses existing between its other parties<sup>34</sup> and subject to the same defenses as if the instrument were non-nego-

33. *Jerman vs. Edwards*, 29 App. C. (D. C.) 535.

34. *Martz vs. State Natl. Bk.*, 147 App. Div. (N. Y.) 250.  
*Goodsell vs. McElroy Bros. Co.*, 86 Conn. 402, 85 A. 509.  
*Cantrell vs. Davidson*, 180 Mo. A. 410, 168 S. W. 271.  
*Kiefer vs. Tolbert*, 128 Minn. 519, 151 N. W. 529.

tible, unless it is one which was originally payable to bearer. Such an instrument is transferable by mere delivery even after it has become specially indorsed. (Sec. 30.) This section gives the person to whom an instrument is so transferred the right to require his transferor to indorse it and he may be compelled to do so by means of an action in equity if he will not do it voluntarily.

The Act does not provide that any holder subsequent to the transferee has this right but it is undoubted in the transferee and he can compel the transferor to indorse the instrument. However, equity will also intervene in behalf of subsequent holders and any such could, in a proper proceeding in equity, compel its indorsement. If the indorsement is made later than the date of the transfer of the instrument and it is questioned whether or not the transferee is a holder in due course the negotiation is considered to have taken effect upon the date when the indorsement is actually made, and not the date when the instrument was transferred to the holder. If in the interval the transferee without indorsement receives notice of a defect in the instrument, or the title to it, he will be bound by such notice even if he has paid full consideration.<sup>35</sup>

**When prior party may negotiate instrument.** "SEC. 50. WHERE AN INSTRUMENT IS NEGOTIATED BACK TO A PRIOR PARTY, SUCH PARTY MAY, SUBJECT TO THE PROVISIONS OF THIS ACT, RE-ISSUE AND FURTHER NEGOTIATE THE SAME. BUT HE IS NOT ENTITLED TO ENFORCE PAYMENT THEREOF AGAINST ANY INTERVENING PARTY TO WHOM HE WAS PERSONALLY LIABLE."

A negotiable instrument may be re-issued or re-negotiated by a party who has once before had it, if in its course it returns to him, and it is then subject to all of

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35. Benson vs. Abbott. 95 Ga. 69.

Weber vs. Orton, 91 Mo. 677.

Thompson-Houston El. Co. vs. Capitol El. Co., 56 Fed. 849.

the provisions of this Act as upon its first issue. If, however, any party to the instrument does again receive it and indorses and negotiates it a second time, he cannot enforce its payment against any person to whom he himself was personally liable on its first negotiation. This includes parties who became such between his first negotiation of the instrument and its return to him.<sup>36</sup> One who indorsed the instrument without recourse is, therefore, not subject to this limitation.<sup>37</sup> As to others, and new parties the instrument is treated as if it were upon its first issue and negotiation. If the instrument has returned to the drawer or maker and it is re-issued by him, the fact that it is in his hands is notice that it has run its course<sup>38</sup> but if he re-issues it before maturity, it proceeds as upon a new negotiation and in some jurisdictions it is held that no party to its first negotiation, except himself, is then liable to anyone who takes the instrument upon its second issue. In others, it is held, upon what seems to be the better reasoning, that all secondary parties remain liable upon their contracts of endorsement until the maturity of the instrument.<sup>38a</sup> (See also Secs. 119 and 121.)

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36. *Adrian vs. McCaskill*, 103 N. C. 182.

37. *French vs. Barney*, 23 N. C. 219.

38. *Quimby vs. Varnum*, 190 Mass. 211, 76 N. E. 671.

*Downing vs. Neeley* (Tex. Civ. App.), 129 S. W. 1192.

*First Nat. Bk. vs. Harris*, 7 Wash. 139.

*Aurora St. Bk. vs. Hayes-Eames El. Co.*, 88 Nebr. 187.

38a. See Note L. R. A. 1918 E. 170.

## SUBDIVISION IV.

## RIGHTS OF HOLDER.

Section	Section
51 Right of holder to sue— <b>payment.</b>	56 What constitutes notice of defect.
52 What constitutes a holder in <b>due course.</b>	57 Rights of holder in due course.
53 When person not deemed to be a holder in due course.	58 When subject to original de- fenses.
54 Notice before full amount <b>paid.</b>	59 Who deemed holder in due course.
55 When title defective.	

The person who is in lawful possession of the instrument as payee, indorsee, or bearer (Sec. 191), is the holder and he is entitled to recover its proceeds and may bring an action upon the instrument in his own name, even if it is the property of another. In this respect, a negotiable instrument differs from a simple contract for the payment of money for of the latter, in States where the real party in interest is required to bring an action in his own name, no assignment can be made for the mere purpose of collection which will enable the assignee to sue upon the contract in his own name. The holder of a negotiable instrument, however, has sufficient title for the purpose of suit even if he is not a holder for value or in due course, or has no interest in the instrument or its proceeds. The Court will never inquire whether he brings the action in his own behalf or for another, and will not inquire into his right of possession unless the question is raised as a matter of defense upon an allegation of fraud or bad faith.<sup>1</sup>

**Right of holder to sue; payment.** "SEC. 51. THE HOLDER OF A NEGOTIABLE INSTRUMENT MAY SUE THEREON IN HIS OWN NAME; AND PAYMENT TO HIM IN DUE COURSE DISCHARGES THE INSTRUMENT."

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1. Lowell vs. Bickford. 201 Mass. 543.



If the person who is obliged to pay the instrument pays a holder at or after its maturity even though he be not the owner, he will have discharged the obligation completely unless he knows or not knowing, is chargeable with the duty to know that the holder has no authority to receive the payment. The subject of payment will be treated further under Section 88.

What  
constitutes a  
holder in due  
course.  
\*Wisconsin.

“SEC. 52. A HOLDER IN DUE COURSE IS A HOLDER WHO HAS TAKEN THE INSTRUMENT UNDER THE FOLLOWING CONDITIONS:

1. THAT IT IS COMPLETE AND REGULAR UPON ITS FACE;

2. THAT HE BECAME THE HOLDER OF IT BEFORE IT WAS OVERDUE, AND WITHOUT NOTICE THAT IT HAD BEEN PREVIOUSLY DISHONORED, IF SUCH WAS THE FACT;

3. THAT HE TOOK IT IN GOOD FAITH AND FOR VALUE;

4. THAT AT THE TIME IT WAS NEGOTIATED TO HIM HE HAD NO NOTICE OF ANY INFIRMITY IN THE INSTRUMENT OR DEFECT IN THE TITLE OF THE PERSON NEGOTIATING IT.”<sup>a</sup>

This section defines the term “holder in due course” which has been so frequently used up to this time. To become entitled to the protection of the provisions of this Act in favor of a holder in due course, every person who takes a negotiable instrument must see to it that he does so with the necessary qualifications.

One becomes a holder in due course if the instrument he holds and seeks to enforce is first of all complete and regular upon its face. This general statement would seem to mean that the instrument must have been complete when issued and negotiated in accordance with the provisions of this Act and must not, on its face, show that it has been altered,<sup>2</sup> and these essential requisites to

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2. *Manussier vs. Wright*, 158 Ill. A. 214.  
*Barton Savgs. Bk. Co. vs. Stephenson*, 87 Vt. 433, 89 A. 639.  
*Holbart vs. Lauretson*, 34 S. D. 267.  
*Marion Natl. Bk. vs. Russell*, 14 Ky. L. 368.  
*Critten vs. Chemical Bk.*, 171 N. Y. 219, 231.  
*In re Philpot's Est.*, 151 N. W. (Iowa) 825.

his title will appear with appropriate explanations at their proper places. If there are such ambiguities or contradictions in the instrument that they are irreconcilable, or they indicate that either one of two interpretations may be applied with equal certainty or uncertainty, this would constitute an irregularity which would destroy its negotiability if they affect the sum payable or the place where, time when, or the parties to whom the instrument is payable. (Subd'n 1.) The holder must be prepared to show that he acquired the instrument before it matured and if it had previously been dishonored or repudiated, he must be prepared to show that he had no notice of its dishonor. He is not obliged to prove these qualifications unless challenged, but if a lack of them is alleged against him, and some proof offered to sustain the allegation, he will have the burden of proving that he is a holder in due course.

If an instrument which is payable on demand is offered for negotiation an unreasonable length of time after its issue, the person who takes it will not be considered a holder in due course. The term "due course" supposes that the instrument has passed in a single transaction, or passes steadily and regularly from one person to another in a series of regular business transactions, and is transferred under the usual customs and usages of business, thus including any purchase in good faith for value of a note or bill before maturity.<sup>3</sup> If such an instrument stops in its course for an unreasonable length of time in the possession of one holder or continues to be negotiated for an unreasonable length of time after its issue, without presentment and demand for payment, a suspicion arises

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3. *Tischer vs. Merca*, 118 Ind. 586, 21 N. E. 316.  
*Kellogg vs. Curtis*, 69 Me. 212, 31 Am. R. 273.  
*First Natl. Bk. vs. Flath*, 10 N. D. 281, 286, 86 N. W. 867.  
*Kimbrow vs. Lytle*, 10 Yerger (Tenn.), 417, 31 Am. D. 585.

of irregularity, or that some infirmity may have caused the delay in presenting or negotiating it when it is again offered for negotiation. The rigidity with which the Act is applied to the enforcement of the duties of maker, drawer, acceptor, and indorser of a negotiable instrument is not relaxed when its provisions, by which his standing is to be determined, are applied to the holder. If the holder is a "holder in due course" he will hold the instrument free from all defenses which prior parties might have among themselves (Sec. 57) and a familiarity with the provisions of this subdivision is of the utmost importance.

The holder must also have taken the instrument in good faith and for value. Value here does not mean full value, but he must have given some consideration for its transfer, or have acquired the instrument through some one who did, and that consideration must have been sufficient to sustain his right to recover upon the instrument. (For definition of value see Secs. 25 and 191.)

The discount of negotiable paper by a bank will not constitute the bank a holder in due course, under this section, when it is shown that the proceeds have been placed to the credit of its customer and remain in the bank.<sup>4</sup> Nor does the mere crediting of a check if the customer's account continues to hold sufficient money to pay it if it is dishonored,<sup>5</sup> or the item is credited for collection.<sup>6</sup> But if the customer checks against the discount or deposit, or the bank incurs a liability upon the items, it then becomes a holder for value.<sup>7</sup> Likewise if

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4. Albany Co. Bank vs. Ice Co., 92 App. Div. (N. Y.) 47.  
Merchants Bk. vs. Santa Maria Sugar Co., 162 App. Div. (N. Y.) 248.

Miller vs. Norton, 114 Va. 610.

McKnight vs. Parsons, 136 Ia. 390.

5. Citizens Bk. vs. Cowles, 180 N. Y. 346.

6. Bank of America vs. Waydell, 187 N. Y. 115.

7. Montrose Savgs. Bk. vs. Claussen, 137 Iowa, 73.

the proceeds are appropriated by the bank to the depositor's indebtedness to it before receiving notice of any infirmity in the instrument or title of its transferor,<sup>8</sup> or the bank lends its own credit for the customer's benefit.<sup>9</sup> Payment of draft with bill of lading attached by crediting the drawer's checking account will constitute the bank a holder in due course, whether or not the drawer had checks against the deposit at time of the credit.<sup>10</sup>

And, lastly, the holder must not have had notice at the time it was negotiated to him, or before that time, that the instrument is not all right and just what it purports to be, or that the person negotiating it had not a good title to it. The provisions of Section 55 determine when the title is defective. What is to be regarded as notice will be determined by Sec. 56. If none of the defects enumerated in those two sections exist in the title of the holder, and he has not acquired the instrument contrary to the provisions of the next section, he will be deemed a "holder in due course" and can require payment regardless of any infirmities or defects in the instrument or its prior negotiation and recover against all prior indorsers as well as against the persons primarily liable upon it, except those whose signatures have been forged or such as have qualified their liability. To hold the indorsers he will be required to observe the provisions respecting presentment, demand and notice given under Secs. 70 to 118.

The extent to which the execution and delivery or the negotiation of an instrument on Sunday is affected by the fact that it is done on that day and its effect upon the rights of the holder, will depend altogether upon

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8. City Dep. Bk. vs. Green, 130, Iowa, 384.

9. Elgin Banking Co. vs. Hall, 199 Tenn. 548; 108 S. W. 1068.

10. Tapee vs. Varley, 184 Mo. App. 470; 171 S. W. 19.



other statutory enactment. If by statute in the State where the transaction occurs it is made unlawful to transact business on Sunday, then the execution or negotiation of the instrument, if completed on that day, will be illegal and void as between the parties. To affect subsequent holders, however, this infirmity must be apparent from the instrument itself.<sup>11</sup>

A promissory note providing that default in payment of any installment of the principal or interest shall cause the whole note to become due is overdue upon the failure to pay the matured installment, and one taking it after such default with notice, or if it is apparent upon the face of the instrument, will not be a holder in due course.<sup>12</sup> (See Sec. 2.)

**When person not deemed holder in due course.** "SEC. 53. WHERE AN INSTRUMENT PAYABLE ON DEMAND IS NEGOTIATED AN UNREASONABLE LENGTH OF TIME AFTER ITS ISSUE, THE HOLDER IS NOT DEEMED A HOLDER IN DUE COURSE."

What is an unreasonable length of time is not established by this act at any fixed period nor has any definite rule applicable to all cases been laid down by the courts. In determining what is a reasonable or an unreasonable delay the particular circumstances of each case must be taken into account. (Sec. 193.)

Parties to the instrument, other than those primarily liable, will be discharged by any unreasonable delay in presenting and demanding payment of an instrument payable on demand. See Sections 7-71-144 and 193 for more on this subject.

**Notice before full amount paid.** "SEC. 54. WHEN THE TRANSFEREE RECEIVES NOTICE OF ANY INFIRMITY IN THE INSTRUMENT OR DEFECT IN THE TITLE OF THE PERSON NEGOTIATING THE SAME BEFORE HE HAS PAID THE FULL AMOUNT, AGREED TO BE PAID THEREFOR, HE WILL BE DEEMED A HOLDER

11. Gilman vs. Berry, 59 N. H. 62.

12. Hodge vs. Wallace, 129 Wis. 84; 108 N. W. 212; 116 A. S. R. 938.



IN DUE COURSE ONLY TO THE EXTENT OF THE AMOUNT THERE-  
TOFORE PAID BY HIM.”

It has already been said, under Sec. 52, that to become a holder in due course, one must have acquired the instrument without notice of any defects or infirmities in its title. If it should happen, as it sometimes does, that the transferee has already paid a part of the consideration for its transfer to him before becoming aware of the defect which exists in the instrument or in the title of the person who negotiates it to him, he will then be considered a holder in due course only to the extent of the amount he paid before the defect or infirmity became known to him. If after having made a partial payment on account of the transfer of the instrument, he learns of its imperfection, and notwithstanding that fact pays the balance agreed to be paid for the instrument he will not be in the position of a holder in due course as to the amount he pays after notice, but he is such only to the amount of his payment before notice.<sup>14</sup> But knowledge alone is not necessarily notice, and what is deemed to be “notice” is to be determined by the application of the provisions of Sec. 56.

**When title  
defective.**  
<sup>a</sup>**Wisconsin.**

“SEC. 55. THE TITLE OF A PERSON WHO  
NEGOTIATES AN INSTRUMENT IS DEFECTIVE  
WITHIN THE MEANING OF THIS ACT WHEN HE  
OBTAINED THE INSTRUMENT, OR ANY SIGNATURES THERETO, BY  
FRAUD, DURESS, OR FORCE AND FEAR, OR OTHER UNLAWFUL  
MEANS, OR FOR AN ILLEGAL CONSIDERATION, OR WHEN HE NE-  
GOTIATES IT IN BREACH OF FAITH, OR UNDER SUCH CIRCUM-  
STANCES AS AMOUNT TO A FRAUD.”<sup>a</sup>

When the instrument is obtained or negotiated, or any signature upon it is obtained in the manner indicated in this section, the title of the person who so procured the instrument or signature is defective. Any person who

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14. Dresser vs. Missouri, etc R. R. Cons. Co., 93 U. S. 93.

takes the instrument with notice that these defects or any of them exist is also affected by them and will not be considered a holder in due course. The existence of any of them will defeat his right to recover upon the instrument against any person who became a party under such circumstances, if it is shown that he knew of them at the time or before he acquired the instrument or if, not knowing of their existence, he is chargeable in law with a duty to know. (See Sec. 56.)

Fraud consists of any wilful deception by which the execution, indorsement, or negotiation of the instrument is obtained. Whether the fraud is a positive fraud, constructive fraud, a fraud in law, or the circumstances are such as amount to fraud, must be determined in each particular case, but the following essential elements must exist in it:

To be the subject of an action, the general rule is that the person chargeable with the fraud must have made a material false representation;<sup>15</sup> he must have known when he made it that it was false, or have made it recklessly as a positive assertion, without any knowledge of or in wilful disregard of its truth or falsity.<sup>16</sup> He must have made the false or reckless representation with the intention that it should be acted upon by the person whom he expected to influence by it and the fraudulent representation must actually have been acted upon by

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15. *Hall vs. Grayson Co. Natl. Bk.*, 36 Tex. Civ. App. 317, 81 S. W. 762.

*Peden vs. Birkle*, 27 Colo. A. 323, 148 P. 913.

16. *Hale vs. Citizens Bank*, 111 Ark. 258, 163 S. W. 775.

*Bank vs. Hale*, 104 Ark. 388, 149 S. W. 845.

*Hodgens vs. Jennings*, 148 App. Div. (N. Y.) 879, 133 N. Y. S. 584.

the party using this defense,<sup>17</sup> who must thereby have suffered loss or injury.<sup>18</sup>

The concealment of any material fact which it is a duty to disclose will have the same effect as, and be equivalent to a positive misrepresentation. Thus, when one obtains or procures the execution or indorsement of a negotiable instrument, or induces or procures any one to become a party to it without disclosing all material facts in relation to the instrument which he owes a duty to disclose to him, he will have perpetrated a fraud upon him and if he thereby obtains title to the instrument his title will be defective.<sup>19</sup>

Duress is a condition which exists when one is induced or compelled by the unlawful act of another to make a contract or to do or forego some act under circumstances which overcome the mind and will of a person of ordinary firmness and deprive him of its free exercise.<sup>20</sup> If a signature to a negotiable instrument is procured under unlawful threats of bodily harm or of harm to business, reputation and standing, or other serious harm or loss, either to the signer or to some other person, a member of his family or near kinsman, and the one signing is thereby actually put in fear of the threatened danger and for that, and no other reason, makes the signature or indorsement, not otherwise being obliged to do so,

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17. *Champion Foundry, etc., Co. vs. Heskett*, 125 Mo. A. 516, 102 S. W. 1050.

*Hurst vs. Lee*, 143 App. Div. (N. Y.) 614, 127 N. Y. S. 1040.  
*Bank vs. Hale*, 104 Ark. 388, 149 S. W. 845.

18. *Keller vs. Johnson*, 11 Ind. 337, 71 Am. D. 355.  
*Strickland vs. Parlin, etc., Co.*, 118 Ga. 213, 44 S. E. 997.  
*Bank of Commerce vs. Brayles*, 16 N. M. 414, 120 P. 670.

19. *In re Lawrence*, 166 Fed., 239, 92 C. C. C. A. 251.  
*Hodge vs. Smith*, 130 Wis. 326, 110 N. W. 192.

20. *Cribbs vs. Sowle*, 87 Mich. 340, 49 N. W. 587.

such force and fear constitute duress<sup>21</sup> and the title of a person taking the instrument under these circumstances, or with notice of their existence, is defective. And if the instrument or any signature upon it is obtained by other unlawful means, the title of any holder chargeable with notice of the unlawful means by which the instrument or signature was obtained, is defective.

If the consideration for the instrument or its negotiation is illegal, that is, one not lawful, the person obtaining the instrument for such unlawful consideration does not obtain a good title to it. Read what is said under Section 5 in regard to illegal provisions in the instrument.

No person has a right to negotiate the instrument in breach of faith; which means, that when one has the instrument for a specific purpose, he has no right, without permission, to divert it to a different use. And if any one obtains the instrument, or procures it to be indorsed, or negotiates it under such circumstances as amount to fraud, he cannot obtain or convey a good title to the transferee who is chargeable with notice of its fraudulent procurement or negotiation.<sup>22</sup>

The defense of want of title cannot be used to defeat the enforcement of the instrument in the hands of one who would otherwise be a holder in due course, unless it

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21. *Bush vs. Brown*, 149 Ind. 573, 19 Am. Rep. 695.  
*Swear vs. Carr*, 76 Ga. 322, 2 A. S. R. 44.  
*Com. vs. Reffitt*, 149 Ky. 300, 148 S. W. 48, 42 L. R. A. (N. S.) 329 and note.  
*Burton vs. McMillan*, 52 Fla. 469, 42 So. 849.  
*Fire Ins. Co. vs. Hull*, 51 Oh. St. 270, 37 N. E. 1116.  
*Hodge vs. Wallace*, 129 Wis. 84, 108 N. W. 212, 116 A. S. R. 938.  
*Williamson, Halsell, Frazier Co. vs. Ackerman*, 77 Kas. 502.  
*Fountain vs. Bigham*, 235 Pa. St. 35, 84 Atl. 131.
22. *Gardner vs. Beacon Trust Co.*, 190 Mass. 27, 76 N. E. 445, 112 A. M. S. R. 443, 2 L. R. A. (N. S.) 767, 5 Ann. Cas. 581 and note.  
*Lampman vs. Lampman*, 118 Iowa, 140, 143, 91 N. W. 1042.



is shown that he had knowledge of it and the next section provides what shall constitute notice.

**What constitutes notice of defect.** "SEC. 56. TO CONSTITUTE NOTICE OF AN INFIRMITY IN THE INSTRUMENT OR DEFECT IN THE TITLE OF THE PERSON NEGOTIATING THE SAME, THE PERSON TO WHOM IT IS NEGOTIATED MUST HAVE HAD ACTUAL KNOWLEDGE OF THE INFIRMITY OR DEFECT, OR KNOWLEDGE OF SUCH FACTS THAT HIS ACTION IN TAKING THE INSTRUMENT AMOUNTED TO BAD FAITH."

A mere suspicion of the existence of an infirmity in an instrument or in the holder's title is not notice that such infirmity exists. Nor is mere rumor, though it has come to be heard by the person who is about to take the instrument, before doing so. And if the suspicion and rumors which attend the instrument are such as would place any ordinarily prudent man on his guard, or any other circumstances surrounding the transaction are such as would warn him, or any peculiarity about the bill itself or the parties to it is such as would put an ordinarily prudent man upon guard against fraud or irregularity, these are not sufficient, of themselves, to defeat the holder's right of recovery upon the instrument. Such things are not considered to be the equivalent of actual notice of infirmity in the instrument or the holder's right to negotiate it. Unless he has actual knowledge of the infirmity or defect in the title of the person from whom he takes the instrument, or unless the defect in the instrument is so cogent and obvious that his action in taking it, notwithstanding the obvious infirmity in it or defect in the holder's title, amounts to bad faith, the transferee is not chargeable with notice.<sup>23</sup> But if he

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23. Fillebrown vs. Hayward, 190 Mass. 472, 77 N. E. 45.  
Goodman vs. Simonds, 20 How. 343, 15 L. Ed. 934.  
Young vs. Lowry, 192 Fed. 825, 113 C. C. A. 149.  
Reilly vs. McKinnon, 159 Fed. 78.  
Union Natl. Bk. vs. Neill, 149 Fed. 711, 79 C. C. A. 417.  
Natl. Bk. vs. Weston, 172 N. Y. 250, 64 N. E. 949.



has reason to suspect fraud or irregularity and he fails to investigate for fear his suspicions will be confirmed, or his investigation disclose a defense to the instrument, he will not be a purchaser in good faith if he then takes it.<sup>24</sup>

“SEC. 57. A HOLDER IN DUE COURSE  
 Rights of holder in due course. HOLDS THE INSTRUMENT FREE FROM ANY DEFECTS OF TITLE OF PRIOR PARTIES, AND  
<sup>a</sup>Illinois. FREE FROM DEFENSES AVAILABLE TO PRIOR  
<sup>b</sup>Wisconsin. PARTIES, AMONG THEMSELVES,<sup>a</sup> AND MAY ENFORCE PAYMENT OF THE INSTRUMENT FOR THE FULL AMOUNT AGAINST ALL PARTIES LIABLE THEREON.”<sup>b</sup>

Having become a holder in due course, the person who has actual or constructive possession of the instrument has the absolute right to enforce it against all persons liable upon it. He is not concerned with any defects or imperfections in the instrument or in the manner of its procurement which may amount to matters of defense among the parties themselves and all parties are liable to him for the full amount of the instrument, regardless of their rights and defenses against each other. His title and possession are absolute and he can require payment from all persons whose names are upon the instrument except those who have qualified their indorsements by the words “without recourse,” or words of equivalent meaning (Sec. 38), and those whose names upon it were forged or made without authority, or unless the instrument was void at its inception because made in vio-

Canajoharie Natl. Bk. vs. Defendorf, 123 N. Y. 191, 25 N. E. 402, 10 L. R. A. 676 and note.

Kitchen vs. Loudonback, 48 Oh. St. 177, 26 N. E. 979, 29 Am. S. R. 540.

Johnson vs. Way, 27 Oh. St. 374.

Kavanagh vs. Bk. of America, 239 Ill. 404, 88 N. E. 171.

24. Lytle vs. Lansing, 147 U. S. 59, 71, 13 S. Ct. 254, 37 L. Ed. 78.  
 In re Stanford Clothing Co., 187 Fed. 172.

In re Hopper-Morgan Co., 156 Fed., 525, 19 Am. Bankr. R. 518.

lation of statute law, a question upon which, however, the decisions are conflicting.<sup>25</sup> (Sec. 23.)

When subject to original defenses.

<sup>a</sup>Illinois, Wisconsin.

<sup>b</sup>Alabama.

“SEC. 58. IN THE HANDS OF ANY HOLDER OTHER THAN A HOLDER IN DUE COURSE, A NEGOTIABLE INSTRUMENT IS SUBJECT TO THE SAME DEFENSES AS IF IT WERE NON-NEGOTIABLE. BUT A HOLDER WHO DERIVES HIS TITLE THROUGH A HOLDER IN DUE COURSE, AND WHO IS NOT HIMSELF A PARTY TO ANY FRAUD<sup>a</sup> OR ILLEGALITY AFFECTING THE INSTRUMENT, HAS ALL THE RIGHTS OF SUCH<sup>b</sup> FORMER HOLDER IN RESPECT OF ALL PARTIES PRIOR TO THE LATTER<sup>a</sup>.”

The defenses which the original parties to an instrument, as the maker and payee of a promissory note, can make among themselves are called “original defenses” and a negotiable instrument is always subject to these while in the hands of the original parties, to the same extent that an instrument would be which is not negotiable. Any holder other than a holder in due course, also takes the instrument subject to these defenses. But a holder who is not a holder in due course, having acquired his title through a holder in due course and not himself a party to any fraud or any of the other infirmities which affect the instrument as provided in Secs. 55 and 56, obtains with the transfer to him through the holder in due course, all the rights which that holder had against parties who signed the instrument before he became a party to it. By the transfer to a holder in due course the character of the instrument as an available security became established. The subsequent transferee, therefore, even though he purchase with notice, acquires all the rights of the holder in due course and is himself so considered. He can stand on that holder’s title and enforce the in-

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25. Alexander vs. Hazelrigg, 123 Ky. 677.  
 Citizens Bk. vs. Crittenden Record Press, 150 Ky. 634.  
 Sabine vs. Paine, 166 App. Div. (N. Y.) 9.  
 Schlessinger vs. Kelly, 114 App. Div. (N. Y.) 546.  
 Schlesinger vs. Lehmeier, 191 N. Y. 69.

strument against all parties who became parties prior to that holder in due course through whom he acquired his title.<sup>26</sup>

Who deemed  
holder in due  
course.

“SEC. 59. EVERY HOLDER IS DEEMED *prima facie* TO BE A HOLDER IN DUE COURSE; BUT WHEN IT IS SHOWN THAT THE TITLE OF ANY PERSON WHO HAS NEGOTIATED THE INSTRUMENT WAS DEFECTIVE, THE BURDEN IS ON THE HOLDER TO PROVE THAT HE OR SOME PERSON UNDER WHOM HE CLAIMS ACQUIRED THE TITLE AS A HOLDER IN DUE COURSE. BUT THE LAST MENTIONED RULE DOES NOT APPLY IN FAVOR OF A PARTY WHO BECAME BOUND ON THE INSTRUMENT PRIOR TO THE ACQUISITION OF SUCH DEFECTIVE TITLE.”

Every holder of an instrument is considered to be a holder in due course until the contrary is shown to be true. And when it is shown that the title was defective in the hands of any person who negotiated the instrument it is made the duty of that one seeking its enforcement to meet and overcome the proof offered and to show that either he himself or some other person under whom he claims became a holder in due course, that is, acquired the instrument under the circumstances and free from the imperfections affecting the title which are enumerated in Sec. 55. The holder cannot be required to furnish this proof and his position cannot be assailed, however, by any one who became a party to the instrument before the alleged defect in the title occurred. Such person is not concerned with imperfections occurring after he became a party to the instrument and cannot take advantage of them.

When the instrument concerning which inquiry is made to determine the holder's qualification as a holder

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26. Comstock vs. Buckley, 141 Wis. 228, 233, 123 S. W. 415, 135 Am. S. R. 34.

Cover vs. Myers, 75 Md. 406.

Black vs. 1st Natl. Bk. Westminister, 96 Md. 399.

McMurray vs. McMurray, 258 Mo. 405, 417.

Horan vs. Mason, 141 App. Div. (N. Y.) 89.

in due course is one payable on demand, another element which, however, does not concern title, must be considered. It is as to the time at which the holder acquired the instrument and if it is shown that he acquired it an unreasonable length of time after its issue, or last negotiation, if a bill, he will not be considered to be a holder in due course. (Sec. 53.)

Upon the question whether or not the payee is ever to be considered a holder in due course it has not been possible to determine with any degree of assurance from the decisions interpreting the Act, whether he is or is not to be regarded as such a holder. Perhaps it may be best said that he is not in all cases, but it seems to be reasonably well established that the payee of an instrument issued to him as the creditor of a person to whom the maker is indebted is to be regarded as a bona fide purchaser, holder in due course, and that the instrument in his hands is not subject to defenses ordinarily available between original parties. In the cases, this conclusion is reached by regarding him in the position he would occupy if he had received the instrument by indorsement from the creditor.<sup>27</sup>

An examination of the cases cited will reveal that the question of the payee's status as a holder in due course always arises upon instruments on which there are either plural primary parties, or such as have been indorsed for accommodation. Upon such instruments it has been urged with success in some jurisdictions that the payee can never be a holder in due course and take the instru-

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27. *Lamson vs. Beard*, 94 Fed. 30, 39, 36 C. C. A. 56, 45 L. R. A. 822.

*So. Boston Iron Co. vs. Brown*, 63 Me. 139.

*Cagle vs. Lane*, 49 Ark. 465, 5 S. W. 790.

*City of Adrian vs. Whitney Center Natl. Bk.*, 180 Mich. 171.

*Regester's Sons Co. vs. Reed*, 185 Mass. 226.

ment free from the original defenses.<sup>28</sup> In others it is held, and it seems to me with the better reason, that if the payee takes the instrument at its initial delivery without any notice of equities existing between its other parties he is, by virtue of this section and of Section 55 a holder in due course.<sup>29</sup>

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28. *St. Charles Savgs. Bk. vs. Edwards*, 243 Mo. 553.  
*Builders Lime & Cem. Co. vs. Weimer*, 170 Iowa, 444, 161 N. W. 100.
29. *Liberty Trust Co. vs. Tilton*, 217 Mass. 462.  
*Brown vs. Rowan*, 154 N. Y. S. 1098.  
*Ex Parte Goldberg & L.*, 191 Ala. 356, 67 So. 839, L. R. A. 1915 F. 1159.



## SUBDIVISION V.

## LIABILITIES OF PARTIES.

Section		Section	
60	Liability of maker.	65	Warranty where negotiation by delivery, etc.
61	Liability of drawer.	66	Liability of general indorser.
62	Liability of acceptor.	67	Liability of general indorser where paper is negotiable by delivery.
63	When person deemed indorser.	68	Order in which indorsers are liable.
64	Liability of irregular indorser.	69	Liability of agent or broker.

The parties to a negotiable instrument, to whom liability attaches, are classified as the maker, the drawer, the acceptor and the indorser. All persons who assume a liability upon the instrument become parties as one of these, unless by words of special qualification they assume a different liability upon it. Their liability is in the nature of a contract and like any other contract it is to be interpreted in accordance with the language used in the instrument (see Sec. 10). Whether expressed or not, however, certain liabilities attach to the parties to a negotiable instrument and what these are and what admissions are deemed to be implied from their signatures are provided in this and the following nine sections of the Act.

**Liability of maker.**

“SEC. 60. THE MAKER OF A NEGOTIABLE INSTRUMENT BY MAKING IT ENGAGES THAT HE WILL PAY IT ACCORDING TO ITS TENOR, AND ADMITS THE EXISTENCE OF THE PAYEE AND HIS THEN CAPACITY TO INDORSE.

The maker of a promissory note agrees that he will pay the instrument according to its tenor, that is, according to the manner in which he states in the instrument that he will do so. By placing his signature upon

the instrument payable to a named payee or his order he admits, by that act alone, that the payee whom he names has a legal existence<sup>1</sup> and then has the right and the legal capacity to indorse it, which means that he is not under any legal disability that would render him incompetent to indorse the instrument,<sup>2</sup> and, if the instrument is negotiated into the hands of a holder for value, the maker cannot afterward deny either of these admissions (Sec. 57). He usually signs the instrument upon its face but if his signature appears elsewhere with identifying words, or if it can be determined from the context of the instrument that he intended to sign as an original promisor, he will be liable as maker.<sup>3</sup>

**Liability of  
drawer.**

**Illinois,  
Colorado.**

“SEC. 61. THE DRAWER BY DRAWING THE INSTRUMENT ADMITS THE EXISTENCE OF THE PAYEE AND HIS THEN CAPACITY TO INDORSE; AND ENGAGES THAT ON DUE PRESENTMENT THE INSTRUMENT WILL BE ACCEPTED AND PAID, OR BOTH, ACCORDING TO ITS TENOR, AND THAT IF IT BE DISHONORED, AND THE NECESSARY PROCEEDINGS ON DISHONOR BE DULY TAKEN, HE WILL PAY THE AMOUNT THEREOF TO THE HOLDER, OR TO ANY SUBSEQUENT<sup>d</sup> INDORSER WHO MAY BE COMPELLED TO PAY IT, BUT THE DRAWER MAY INSERT IN THE INSTRUMENT AN EXPRESS STIPULATION NEGATING OR LIMITING HIS OWN LIABILITY TO THE HOLDER.

The drawer of a bill of exchange by the act of drawing and issuing the bill, like the maker of a promissory note, (Sec. 60), impliedly admits that the payee he names exists and at the time of the delivery of the bill to him has the right to indorse it and is under no legal disability which would prevent him from doing so. He also engages by the act of drawing the bill that the person upon whom he draws will either accept or pay the instrument according to its terms and effect, or do both, when it is

1. Mex. Asph. Pav. Co. vs. Love, 73 Ill. A. 250.

2. Bank of Commerce vs. Rogers, 23 Ont. L. (Canada) 109.  
Smith vs. Marsack, 6 C. B. (Eng.) 486.

3. White vs. Howland, 9 Mass. 314, 6 Am. Dec. 71.

duly presented to him. In addition to this, he agrees by the act of drawing that if the bill is not accepted or paid by the drawee and it thereby becomes dishonored, and if the necessary proceedings to charge him are taken as required by other provisions of this Act (Sees. 89 to 118), upon its dishonor, he will then himself pay the amount called for by the bill to the holder, or to any indorser who may have been obliged to pay it.

This promise is termed an implied promise for the reason that it is understood and agreed to by the drawer by the act of drawing and issuing the bill quite as effectually as though it were expressed in the language of the instrument. Though there is no provision in this section or elsewhere in the Act to the effect that the drawer of a bill or check, by the act of drawing, admits his indebtedness to the payee in at least the sum for which the bill is drawn, the fact that he does so is firmly established.<sup>4</sup>

The drawer may write upon the bill any words indicating that he does not undertake or agree to the promises which are implied from the nature of the instrument he signs and if he does so, or writes other words which limit or qualify his liability to the holder, he cannot be held to any greater liability than that to which he limits himself.

Liability of  
acceptor.  
Missouri,

**“SEC. 62. THE ACCEPTOR BY ACCEPTING THE INSTRUMENT ENGAGES THAT HE WILL PAY IT ACCORDING TO THE TENOR OF HIS ACCEPTANCE AND ADMITS:**

1. THE EXISTENCE OF THE DRAWER, THE GENUINENESS OF HIS SIGNATURE, AND HIS CAPACITY AND AUTHORITY TO DRAW THE INSTRUMENT AND

2. THE EXISTENCE OF THE PAYEE AND HIS<sup>a</sup> THEN CAPACITY TO INDORSE.

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4. McKenzie vs. Barrett, 148 Ill. A. 414.

The person who is named in the bill as the one upon whom it is drawn and who is to indicate when it is presented to him whether or not he will pay it at its maturity is, before acceptance, called the drawee. Upon acceptance of the instrument he becomes the acceptor. By his acceptance he admits everything essential to the validity of the bill,<sup>5</sup> and promises to pay it according to its terms and according to the purport and effect of his acceptance, even if he has no funds of the drawer in his hands at its maturity.<sup>6</sup> If the bill is payable at a time after sight and the drawee intends to pay it, he is required to write his acceptance and sign it and he usually does this by writing his name upon the instrument with words above it indicating that he assents to the drawer's order. (Sec. 132, 133.)

By this act he promises and agrees just as fully as though it were expressed in words in the language of the bill, that he will pay the instrument according to the tenor of his acceptance on the day when it becomes due. The act of accepting is also his admission that the drawer exists, that the latter had the right and the power to draw the instrument, and is an admission that the person named as the payee, to whom the instrument is to be paid, exists and has the right and the power to indorse the bill. The acceptor cannot afterward deny the things which his acceptance expressly or impliedly admits if the bill is in the hands of a holder for value or in due course.<sup>7</sup> (Sec. 57.)

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5. *Ragsdale vs. Gresham*, 141 Ala. 308, 37 S. 367.

6. *Jarvis vs. Wilson*, 46 Conn. 90, 33 Am. R. 18.

7. *Smith vs. Marsack*, 6 C. B. 486.

*Natl. Bank of Commerce vs. Amn. Natl. Bank*, 148 Mo. A. 1, 127 S. W. 429.

*Rallo Natl. Bank vs. First Nat. Bank*, 141 Mo. A. 719, 125 S. W. 513.

*Meuer vs. Phenix Nat. Bank*, 94 App. Div. (N. Y.) 331, 88 N. Y. S. 83, 183 N. Y. 511, 76 N. E. 1100.

This section, therefore, in some jurisdictions, effects a very substantial change in the law in one important respect. In these, if a bank certifies a check which was fraudulently issued or at the time of its certification had been fraudulently raised, it now is obliged to pay it to a subsequent holder in due course in the amount for which it certified, regardless of the amount for which the check was originally drawn or the manner in which it was obtained. (Sec. 14.)

Its certification is by Section 187 made equivalent to an acceptance which it is by this section required to pay according to its tenor. And, of course, if the drawee of a bill accepts a fraudulent bill, or accepts it in a raised amount, he must likewise pay a subsequent holder in due course the amount for which he accepted the bill,<sup>8</sup> without regard to the amount for which it was originally drawn (Sec. 14). The kinds of acceptances which may be made and their effect upon the instrument are described in subdivision 2 of Title II, Secs. 132 to 142 inclusive.

**When person deemed indorser.** "SEC. 63. A PERSON PLACING HIS SIGNATURE UPON AN INSTRUMENT OTHERWISE THAN AS MAKER, DRAWER OR ACCEPTOR, IS DEEMED TO BE AN INDORSER, UNLESS HE CLEARLY INDICATES BY APPROPRIATE WORDS HIS INTENTION TO BE BOUND IN SOME OTHER CAPACITY."

Every person who places his signature upon an instrument otherwise than as maker, drawer, or acceptor, is an indorser and he is liable upon the instrument only as such unless he writes at his signature words which show that he intends to assume some other liability and be bound in some other capacity, as, for example, maker, surety or guarantor. Parol evidence is not admissible to show a different intention.<sup>9</sup>

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8. *Espy vs. Bank of Cinti.*, 18 Wall. (U. S.) 604.

9. *Ligntner vs. Roach*, 95 Atl. (Md.) 62.



An indorser may qualify his indorsement in the manner provided in Sec. 38, and he may assume any greater or lesser liability than that of indorser by using words clearly indicating that which he assumes, or he may indorse merely for identification, in which case he incurs no other liability upon the instrument if he indicates at his signature that he signs only for the purpose of identifying the presenter.<sup>10</sup> The liability of an indorser whose signature is not required in the orderly course of the negotiation of the instrument is fixed in the next section. If any person intending to become an indorser places his name upon the face of the instrument it is necessary that he use words indicating that he signs as an indorser or he may thereby assume the obligation of a primary party. (See Sec. 31.)

**Liability of  
irregular  
indorser.  
Illinois.**

“SEC. 64. WHERE A PERSON, NOT OTHERWISE A PARTY TO AN INSTRUMENT, PLACES THEREON HIS SIGNATURE IN BLANK BEFORE DELIVERY, HE IS LIABLE AS INDORSER IN ACCORDANCE WITH THE FOLLOWING RULES:

1. “IF THE INSTRUMENT IS PAYABLE TO THE ORDER OF A THIRD PERSON, HE IS LIABLE TO THE PAYEE AND TO ALL SUBSEQUENT PARTIES.

2. “IF THE INSTRUMENT IS PAYABLE TO THE ORDER OF THE MAKER OR DRAWER, OR IS PAYABLE TO BEARER, HE IS LIABLE TO ALL PARTIES SUBSEQUENT TO THE MAKER OR DRAWER.

3. IF HE SIGNS FOR THE ACCOMMODATION OF THE PAYEE, HE IS LIABLE TO ALL PARTIES SUBSEQUENT TO THE PAYEE.”

There is one kind of indorser, called an “irregular indorser,” who, not otherwise being a party to an instrument, places his signature upon it in blank before it is delivered. The section refers, of course, to the delivery at the inception of the instrument, or, if the instrument is a bill to its delivery at that time or at the delivery of

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10. American Bank vs. Macondray, 4 Philippine, 695.

the acceptance.<sup>11</sup> This indorser is referred to in the explanation of the preceding section as the indorser whose signature is not necessary to the orderly negotiation of the instrument, and he is known also as an accommodation indorser. (See Sec. 29.)

His liability upon the instrument is as follows: If he places his signature upon an instrument payable to the order of a third person, he is liable to the payee and to all parties who take the instrument after him. If he places his name upon an instrument payable to bearer or payable to the maker's or the drawer's own order, he is liable to all parties who subsequently take the instrument, but not to the maker or drawer. If the irregular indorser signs the instrument for the accommodation of the person named as payee, he is not liable to the payee but he is liable to all parties who take the instrument after that party.

Attention is directed to the fact that by the literal interpretation of Sub-section 3 one who indorses for the accommodation of the acceptor of a bill payable to the drawer's own order, is liable only to holders subsequent to the drawer-payee and not to the drawer. And this is so notwithstanding the fact that he became a party to the instrument entirely for the drawer's security. But the courts have permitted it to be shown, under these circumstances, by other evidence, aside from the instrument itself, that the accommodation indorser signed for the benefit of the drawer-payee and, though not warranted by the language of the sub-section, they hold that one who indorses for the accommodation of the acceptor is

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11. *Kohn vs. Consolidated Butter, etc., Co.*, 30 Misc. 725, 63 N. Y. S. 265.

*Shelmerdine vs. Duffy*, 4 Mart. N. S. (La.) 34.

*Wilson vs. Hendee*, 74 N. J. Law, 640, 66 Atl. 413.

liable to the drawer-payee as well as subsequent parties.<sup>12</sup> (See Sec. 68.)

The irregular indorser becomes a party to the instrument for the purpose of lending his credit and worth to the value of the instrument to which he would not otherwise have been a party. It is not at all material, however, for what purpose he indorses the instrument, if he does so, and if he would not otherwise have been a party to it, his liability is as fixed in this section.<sup>13</sup> It applies to all irregular indorsers, whether for accommodation or otherwise, and it includes any indorsement in blank of any person whose signature is not required in the due and regular negotiation of the instrument, and all those who become parties before delivery and have heretofore been variously held to be, maker, surety, guarantor or indorser. An irregular indorser who signs as surety or guarantor, naming the person for whom he is surety or guarantor, and with other words descriptive of the capacity in which he becomes bound, is held in whatever **obligation** he assumes (Sec. 63). In the absence of words upon the instrument indicating any other capacity in which he is to be charged he will, however, be held to the liability of an irregular indorser and it may not be shown by extrinsic evidence, except as to his immediate parties, that he intended to bind himself in any other.

Warranty where  
negotiation by  
delivery, etc.

“SEC. 65. EVERY PERSON NEGOTIATING AN INSTRUMENT BY DELIVERY OR BY A QUALIFIED INDORSEMENT WARRANTS:

1. THAT THE INSTRUMENT IS GENUINE AND IN ALL RESPECTS WHAT IT PURPORTS TO BE;

2. THAT HE HAS A GOOD TITLE TO IT;

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12. Haddock B. & Co. vs. Haddock, 192 N. Y. 499, 19 L. R. A. (N. S.) 136 and note.

13. Holland Trust Co. vs. Waddell, 75 Hun. 104, 26 N. Y. S. 980, 151 N. Y. S. 666, 46 N. E. 1148.

Chicago Title, etc., Co. vs. Brady, 165 Mo. 197, 65 S. W. 303.

3. THAT ALL PRIOR PARTIES HAD CAPACITY TO CONTRACT;

4. THAT HE HAS NO KNOWLEDGE OF ANY FACT WHICH WOULD IMPAIR THE VALIDITY OF THE INSTRUMENT OR RENDER IT VALUELESS.

BUT WHEN THE NEGOTIATION IS BY DELIVERY ONLY, THE WARRANTY EXTENDS IN FAVOR OF NO HOLDER OTHER THAN THE IMMEDIATE TRANSFEREE.

THE PROVISIONS OF PARAGRAPH NUMBERED THREE OF THIS SECTION DO NOT APPLY TO PERSONS NEGOTIATING PUBLIC OR CORPORATE SECURITIES, OTHER THAN BILLS AND NOTES.”

A warranty is a representation either expressed or implied that the thing warranted is really what it appears and is represented to be, and a person who negotiates an instrument by delivery without indorsement or by qualified indorsement (without recourse see Sec. 38), is held to the warranties expressed in this section. While not liable upon the instrument as one would be who indorses without qualification, the person negotiating the instrument by delivery or this form of indorsement can be held for any failure of his warranty, and he may be sued for its breach independently of any action upon the instrument.

He warrants by his qualified indorsement, or by delivery, that his title to the instrument is good, and if it proves to be defective he will be required to make good any loss which may result from its failure. He also warrants by delivery or by this form of indorsement that all parties to the instrument who became parties prior to himself had the legal capacity to and were able lawfully to become parties to be bound upon the contract in the manner in which they signed it.<sup>14</sup> He does not warrant that the instrument is a valid and subsisting contract, as one does who indorses without qualification, but war-

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14. Leonard vs. Draper, 187 Mass. 536, 73 N. E. 644.  
Glidden vs. Chamberlin, 167 Mass. 486, 46 N. E. 103, 57 Am. S. Rep. 479 and note.



rants merely that he does not know of any fact or thing which would make the instrument less valid than it appears to be, or which would make it of no value. Thus it has been held that the transferee of a note may recover from the seller the consideration paid for the instrument if the latter knew at the time of the transfer that the parties to it were actually insolvent and concealed that fact from him.<sup>15</sup> One who negotiates the instrument by qualified indorsement warrants also that the instrument and all prior signatures are genuine, that is, that it is not a forged instrument<sup>16</sup> and that all parties who signed it prior to its negotiation by him were capable of entering into a legal and enforceable contract.

A qualified indorser impliedly makes these warranties to all persons who become parties to the instrument after his indorsement, but one who transfers the instrument by mere delivery without indorsement, can be held to them only by the person to whom he has transferred it.

The warranty that all prior parties had the capacity to contract upon the instrument applies only to the negotiation of bills of exchange, promissory notes and checks of corporations but does not apply to public or corporation bonds or other securities. You will observe from the next section that the liability of general indorsers differs very materially from that of parties who negotiate by qualified indorsement or by mere delivery.

#### Liability of

#### general indorser.

#### Illinois.

“SEC. 66. EVERY INDORSER<sup>a</sup> WHO IN-

DORSES WITHOUT QUALIFICATION, WARRANTS  
TO ALL SUBSEQUENT HOLDERS IN DUE COURSE:

1. THE MATTERS AND THINGS MENTIONED IN PARAGRAPHS  
NUMBERED ONE, TWO AND THREE OF THE NEXT PRECEDING SEC-  
TION; AND

15. Leonard vs. Draper, 187 Mass. 536, 73 N. E. 644.

Burgess vs. Chapin, 5 R. I. 225.

Gordon vs. Irvine, 105 Ga. 144, 3 S. E. 151.

16. Lennon vs. Gruner, 159 N. Y. 433, 54 N. E. 11.

Farmers Natl. Bank vs. Farmers, etc., Bank, 159 Ky. 141,  
166 S. W. 986.



2. THAT THE INSTRUMENT IS AT THE TIME OF HIS INDORSEMENT VALID AND SUBSISTING.

AND, IN ADDITION, HE ENGAGES THAT ON DUE PRESENTMENT, IT SHALL BE ACCEPTED OR PAID, OR BOTH, AS THE CASE MAY BE, ACCORDING TO ITS TENOR, AND THAT IF IT BE DISHONORED, AND THE NECESSARY PROCEEDINGS ON DISHONOR BE DULY TAKEN, HE WILL PAY THE AMOUNT THEREOF TO THE HOLDER, OR TO ANY SUBSEQUENT INDORSER WHO MAY BE COMPELLED TO PAY IT."

General indorsers are all who indorse without qualification (Sec. 38), including those who indorse restrictively, as for collection. They are bound to subsequent holders in due course by the warranties prescribed in Sub-sections 1, 2 and 3 of the preceding section, and more. Their warranty as to the validity of the instrument is broader than the warranty of one who qualifies his indorsement, or that of a person not an indorser who negotiates the instrument by delivery, for they warrant not only that the instrument is what it purports to be, and not only that they do not know of anything affecting its validity and that all prior parties had the capacity to enter into a legal and enforceable contract, but warrant that the instrument which they indorse is valid and in force and has effect as a legal and enforceable negotiable instrument at the time they indorse it.<sup>17</sup> Except in such States as have changed this section in respect to accommodation parties, every accommodation indorser engages in the same warranties as a general indorser. It has been held that these warranties by the accommodation indorser do not extend to the party who first discounts the accommodation instrument<sup>18</sup> but he is included in their engagement to pay the instrument if it is dishonored.

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17. *Crosby vs. Wright*, 70 Minn. 251.

18. *Bouck vs. Lambeck*, 63 Misc. (N. Y.) 117, 118 N. Y. S. 494.

A collecting bank which endorses the instrument for collection is bound by these warranties and is in all respects liable as an indorser unless it uses words of qualification which negative this liability. In this respect this section of the Act was intended to and does effect an important change in the law as it was formerly interpreted in some States<sup>19</sup> and now makes unnecessary the written guaranty of prior indorsements which banks usually stamp upon these items when they forward them for collection to their correspondents, or which are to be collected through the clearing house. This warranty is now implied from their indorsement for collection without additional words.<sup>19a</sup>

Besides engaging in the warranties set forth in this and in the preceding section, a general indorser, including an accommodation indorser, and one indorsing restrictively, impliedly promises and agrees by his act of indorsing the instrument that upon presentment in due and proper time to the right person, at the right place, it will be accepted or paid in accordance with its purport and effect. He further engages that if it is not so accepted or paid, or both, and if all necessary steps are taken by the holder in proceedings upon dishonor to charge him, as is provided in this Act (Sections 70 to 118, inclusive), he will immediately pay the amount of the instrument to the holder or to any indorser subsequent to himself who may be obliged to pay it. It is by reason of this engagement that the holder is not required

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19. First Nat. Bk. of Belmont vs. First Nat. Bk. of Barnesville, 58 O. S. 207.

United States vs. Am. Exchange Natl. Bank, 70 Fed. 232.

Natl. Park Bank vs. Seaboard Bank, 114 N. Y. 28, 20 N. E. 632, 11 Am. S. R. 612.

Northwestern Natl. Bank vs. Kansas City Bank of Commerce 107 Mo. 402, 17 S. W. 982, 15 L. R. A. 102.

19a. Interstate Trust Co. vs. U. S. Natl. Bank (Colo.), 185 Pac. 260.

upon dishonor to first resort to the parties primarily liable upon the instrument.

**Liability of indorser where paper negotiable by delivery.**

“SEC. 67. WHERE A PERSON PLACES HIS INDORSEMENT ON AN INSTRUMENT NEGOTIABLE BY DELIVERY HE INCURS ALL THE LIABILITIES OF AN INDORSER.”

A negotiable instrument payable to bearer, being transferable by mere delivery, requires no indorsement, but any person who does indorse such an instrument assumes and incurs all of the liabilities of an indorser and, according to the character of his indorsement, his liability will be as fixed in the two preceding sections.

Upon dishonor of a bearer instrument which has been indorsed, the same proceedings must be observed in order to charge an indorser as are required upon an instrument payable to order bearing indorsements. These will be found in the next subdivision of the Act. If he has indorsed specially his liability is limited, however, to only such holders as make title through his indorsement. (Sec. 40.)

**Order in which indorsers are liable.**  
**Illinois.**

“SEC. 68. AS RESPECTS ONE ANOTHER, INDORSERS ARE LIABLE *prima facie* IN THE ORDER IN WHICH THEY INDORSE; BUT EVIDENCE IS ADMISSIBLE TO SHOW THAT AS BETWEEN OR AMONG THEMSELVES THEY HAVE AGREED OTHERWISE. JOINT PAYEES OR JOINT INDORSERS WHO INDORSE ARE DEEMED TO INDORSE JOINTLY AND SEVERALLY.”

An instrument which passes from one person to another, receives indorsement at different times from the holders who negotiate it. Their names appear upon the instrument in the order in which it was held. Upon enforcement of the indorser's liability they are all liable to the holder but in their relation to one another, they are liable in the order in which they signed the instrument. This is the *prima facie* order of their liability, but they are permitted to show that as between or among themselves they have agreed to be otherwise bound. The

instrument, usually shows in what order the indorsers are to be held among themselves and it is important and proper that each place his name immediately after the name of the person from whom he acquired it in order that his position in the order of liability may be readily ascertained, unless, by agreement, the order of his liability is to be fixed by a different position upon the paper. The position of an indorser's name or the order in which he signed does not in the least affect the holder's right of action against him upon dishonor of the instrument, but is of importance to determine the liability of the indorsers to each other. The holder may sue any indorser or all and by statutory provision may join primary and secondary parties in one action upon the instrument<sup>20</sup> including the personal representative of any who may have died.

Payees and indorsers who place their names upon an instrument at the same time with the intention of making themselves joint indorsers are severally as well as jointly liable to a subsequent holder.<sup>21</sup> This liability is called joint and several. Between themselves they are equally liable and one paying for all may have contribution from the others, that is, he can recover from the others the part which each ought to pay unless a different liability is fixed by agreement. (See Accommodation Indorser.) This need not be shown by an express agreement but may be made to appear or be inferred from the circumstances of the occasion for their endorsements and it may be shown by parol evidence.<sup>22</sup>

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20. *Burdette vs. Bartlett*, 95 U. S. 637, 24 L. Ed. 534.  
*Knoxville Bank & Trust Co. vs. Mershon*, 152 Ky. 169.  
*Maddox vs. Duncan*, 143 Mo. 613, 45 S. W. 688.  
*Curtis vs. Davidson*, 215 N. Y. 395, 109 N. E. 481.

21. *Trego vs. Cunningham*, 267 Ill. 367, 108 N. E. 350.

22. *Goldman vs. Goldberger*, 208 Fed. 877.



**Liability of an agent or broker.** "SEC. 69. "WHERE A BROKER OR OTHER AGENT NEGOTIATES AN INSTRUMENT WITHOUT INDORSEMENT, HE INCURS ALL THE LIABILITIES PRESCRIBED BY SECTION 65 OF THIS ACT, UNLESS HE DISCLOSES THE NAME OF HIS PRINCIPAL, AND THE FACT THAT HE IS ACTING ONLY AS AN AGENT."

This section determines the liability of an agent who negotiates an instrument without indorsement. Sections 19, 20 and 21 fix his liability when he negotiates the instrument by indorsement and Section 44 prescribes the manner in which one who is under obligation to indorse an instrument in any representative capacity may do so if he does not intend to assume personal liability upon it. The liabilities prescribed by Section 65 are those which attach to a party who negotiates the instrument by delivery or qualified indorsement, and one who negotiates the instrument in that manner impliedly warrants that the instrument is genuine, that all prior parties had capacity to contract and that he knows of nothing which would impair or destroy its validity. To the extent prescribed in that section, an agent or broker who negotiates by delivery or qualified indorsement also becomes liable upon the instrument, unless he discloses the name of his principal and the fact that he is acting only as an agent.



## SUBDIVISION VI.

### PRESENTMENT FOR PAYMENT.

Section		Section	
70	Effect of want of demand on principal debtor.	80	When presentment need not be made to charge indorser.
71	Presentment where instrument is not payable on demand and where payable on demand.	81	When delay in making presentment is excused.
72	What constitutes sufficient presentment.	82	When presentment may be dispensed with.
73	Place of presentment.	83	When instrument dishonored by non-payment.
74	Instrument must be exhibited.	84	Liability of person secondarily liable when instrument is dishonored.
75	Presentment where instrument payable at bank.	85	Time of maturity.
76	Presentment where principal is dead.	86	Time; how computed.
77	Presentment to persons liable as partners.	87	Rule where instrument payable at bank.
78	Presentment to joint debtors.	88	What constitutes payment in due course.
79	When presentment need not be made to charge drawer.		

The object of presentment for payment is to give the person primarily liable upon the instrument the opportunity to perform his part of the contract to which his signature binds him and, if he does not pay it, to enable the holder to give notice of its dishonor to secondary parties. The secondary parties have impliedly promised to pay only if those primarily liable upon the instrument should fail to do so. "Primary" parties are those who by the terms of the instrument are absolutely required to pay it; all others are "secondarily" liable. (Sec. 192.) These cannot be held to this promise unless the instrument is duly and properly presented and payment is demanded of the person whose primary obligation it is and unless notice of its dishonor is at once given to them. Each secondary party has the right to expect that the in-

strument will be paid at maturity and if it becomes dishonored he is entitled, except in certain cases which will be afterward mentioned, to immediate notice of its dishonor in order that he may protect himself against loss by whatever means may lie in his power.

A holder who fails to use all necessary care in this regard is deemed to be guilty of negligence and it frequently happens that secondary parties are released from liability by reason of his carelessness. But as the first section of this subdivision provides, the party primarily liable upon the instrument, such as the maker of a note or acceptor of a bill, is not entitled to presentment and notice because it is his duty to remember his obligation and pay it when it becomes due and his signature upon the instrument imports an absolute promise to pay it.

**Effect of want of demand on principal debtor.**

<sup>a</sup>Illinois,

Wisconsin.

<sup>b</sup>Kansas, New

York, Ohio.

“SEC. 70. PRESENTMENT FOR PAYMENT IS NOT NECESSARY IN ORDER TO CHARGE THE PERSON PRIMARILY LIABLE ON THE INSTRUMENT;<sup>a</sup> BUT IF THE INSTRUMENT IS, BY ITS TERMS, PAYABLE AT A SPECIAL PLACE, AND HE IS ABLE AND WILLING TO PAY IT THERE AT MATURITY,<sup>b</sup> SUCH ABILITY AND WILLINGNESS ARE EQUIVALENT TO A TENDER OF PAYMENT ON HIS PART. BUT EXCEPT AS HEREIN OTHERWISE PROVIDED, PRESENTMENT, FOR PAYMENT, IS NECESSARY IN ORDER TO CHARGE THE DRAWER AND INDORSERS.”

The person primarily liable upon a promissory note is the maker and presentment for payment is not necessary to charge him. Upon a bill of exchange it is the acceptor and his liability is not affected by the holder's failure to present the instrument for payment. The drawer and indorser of the bill and the indorser of a note, being secondary parties whose liability does not become fixed until the person primarily liable upon the instrument fails to pay it, presentment for payment must be made in order to charge them.

If the bill or note is payable at a place named therein, and if the person obliged to pay it is able and willing to pay it there at maturity he is not required to go elsewhere to make payment. The fact that the maker or acceptor has provided sufficient funds at that place and is able and willing to pay it there, is, of itself, considered to be the equivalent of an offer by him to do so. The next section provides upon what day presentment for payment must be made.

<b>Presentment</b> <b>where instrument</b> <b>is not payable on</b> <b>demand and</b> <b>where payable on</b> <b>demand.</b> <i><sup>a</sup>Nebraska.</i> <i>New Hampshire.</i> <i><sup>a</sup>So. Dakota.</i> <i><sup>b</sup>Vermont.</i>	"SEC. 71. WHERE THE INSTRUMENT IS NOT PAYABLE ON DEMAND, PRESENTMENT MUST BE MADE ON THE DAY IT FALLS DUE. WHERE IT IS PAYABLE ON DEMAND, PRESENT- MENT MUST BE MADE WITHIN A REASONABLE TIME AFTER ITS ISSUE, <sup>a</sup> EXCEPT THAT IN THE CASE OF A BILL OF EXCHANGE, PRESENTMENT FOR PAYMENT WILL BE SUFFICIENT IF MADE WITHIN A REASONABLE TIME AFTER <sup>b</sup> THE LAST NEGOTIATION THEREOF."
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Unless presentment for payment is dispensed with in the manner provided in this Act or delay in presenting the instrument is excused (Secs. 81 and 82), it must be made upon the very day when it falls due. This applies to instruments payable at a definite and fixed or a determinable time after date or acceptance, and not to instruments payable on demand. The latter are payable at any time the holder may wish to demand payment. If a series of notes contains a provision that in default of payment of one of them at maturity those maturing subsequently shall become due at once, and one is dishonored, the others need not be presented for payment on the day of the dishonor of the one upon which the maker defaults. They may be presented within a reasonable time after the dishonor of that one of the series which is not paid at maturity.<sup>1</sup>

1. Creteau vs. Foote, etc., Glass Co., 40 App. Div. (N. Y.) 215, 57 N. Y. S. 1103.

It is provided by this section, however, that if the instrument is payable on demand it must be presented within a reasonable time after its issue if it is a promissory note, or after its last negotiation, if it is a bill. The holder of a promissory note which is payable upon demand and bears indorsements, cannot carry the note an indefinite and long time in security without presenting it, making demand for its payment and, if it is not paid, giving notice of its dishonor to the indorsers in the manner provided in this Act. But, having made the presentment and given due notice of its dishonor, he may wait as long as he likes for its payment, the time for enforcing payment then being limited only by the statute of limitations applicable to such instruments in the State in which their enforcement is sought.

Before the adoption of this Act a promissory note bearing indorsements, payable upon demand without interest, was held to require presentment, demand and notice to indorsers immediately, on the day of or the day after its issue, in order to charge the indorsers. Such a note bearing interest was, however, held to contemplate a continuing loan, and presentment and demand, it was held, might be made and notice given at any time after its issue, within the statute of limitations, of course. But now this Act is interpreted to mean that this distinction does not exist. This section negatives all such decisions in States where a contrary rule prevailed and a promissory note bearing indorsements and which is payable on demand, whether it bears interest or does not, must be presented for payment and payment demanded within a reasonable time after its issue.<sup>2</sup> If it is not paid, notice of its dishonor must be given to each indorser in the manner provided in this Act or he will be discharged.

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2. Commercial Nat'l Bank vs. Zimmerman, 185 N. Y. 210, 77 N. E. 1020.



What is a reasonable time for presentment is not established by the Act or by any interpretation of the Act in such a manner as will permit a fixed rule to be given. As short a period as four months has been held to be unreasonable.<sup>3</sup> The New Hampshire Act fixes sixty days, for demand notes. Decisions by courts are uniform that a delay of more than three years to demand payment upon a promissory note payable upon demand is unreasonable. This Act provides (Sec. 193) what shall be considered in determining what is a "reasonable" or an "unreasonable" time, but regardless of circumstances, it is thought entirely unsafe to delay presentment and demand upon such an instrument longer than four months after its issue. Under certain circumstances delay for a much shorter period might be considered unreasonable. The utmost precaution should be exercised in this regard by the holder and when a demand note contemplates a long time loan indorsers ought to be required to waive presentment, demand, and notice of non-payment, or demand should be made and notice given within a short period, not to exceed, in ordinary cases, four months after the note is issued. This being done, if the instrument is not replaced by another it may be permitted to run indefinitely, subject to the statute of limitations which fixes the time at which it will be barred.

In the case of a bill of exchange which is payable on demand, and this includes a check, the demand must be made within a reasonable time after its issue or last negotiation and all that is here said in regard to promissory notes applies with equal force to such an instrument, except that, it seems to the writer, a delay of four months or even one month, as these instruments are now used, would be regarded as an unreasonable length of

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3. *Frazer vs. Phenix Nat. Bank*, 161 Ky. 175, 170 S. W. 532.



time to delay presentment or to interrupt the negotiation without making presentment. This statement is subject to the qualification that if bills of exchange shall come into more extensive use as the means of discount and investment rather than as collection items, which seems now to be their present most general use in this country, custom will order that the same rules of delay as are now applied to promissory notes shall apply to bills of exchange.

Checks require even more prompt presentment, particularly when they have been deposited for collection by a bank. I shall present in considerable detail in another part of this book the requirements of the law as they are applicable to the presentment of checks by a bank. While they continue to be negotiated and until they are deposited in bank, there does not seem to be any good reason why checks need be presented with any greater dispatch than other bills of exchange payable on demand, that is, in so far as the liability of indorsers may be affected by the length of time they continue to be negotiated. But checks which are not intended for negotiation must be presented at once, the day of or the day after their issue or deposit if they are banked at the place of payment, or they must be forwarded by direct route within that time by the collecting bank for presentment to the bank upon which they are drawn if they are payable elsewhere.<sup>4</sup>

This Act provides elsewhere (Sec. 186), that if a check is not presented for payment within a reasonable time after its issue the drawer will be released from liability to the extent of any loss he may suffer by reason of the

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4. Plover Savings Bank vs. Moodie, 135 Iowa, 685, 110 N. W. 29, 113 N. W. 476.

Columbian Banking Co. vs. Bowen, 134 Wis. 218.

delay. This is, of course, intended as a protection to him in case the drawee bank should fail before his check is presented. There is no similar provision in favor of indorsers and if it shall be held that they are also released by delay in making presentment of a check it must be because of banking custom and the need of most men for the immediate use of money, supply the other two elements to be taken into account in determining what is or is not a reasonable delay. (Sec. 193.) Read in connection with this explanation what has already been said under Sections 7 and 53, and see Secs. 144 and 193, and the synopsis of the law applicable to the collection of checks at the conclusion of Title III.

When a time instrument is payable in installments separate demand must be made at the maturity of each and upon dishonor, notice must be given in the manner provided in Secs. 89 to 118 as in other cases, unless the instrument contains a provision that in default in the payment of any installment all shall become due. In that case the presentment and demand at the maturity of the first installment at which default is made effects the dishonor of the whole instrument if it is not paid and no further presentment or demand need be made. If the later installments are to mature at the option of the holder, demand may be postponed until the last installment falls due and then made.<sup>5</sup> When the instrument contains a provision that the whole sum shall mature and be payable upon default in the payment of any installment of interest, demand must be made and notice given at the first default in order to hold the indorsers,<sup>6</sup> unless the accelerated maturity is optional with the holder. (See Secs. 2 and 52.)

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5. *Eastman vs. Thurman*, 24 Cal. 379.

6. *Mallon vs. Stevens*, 6 Ohio Dec. Reprint, 1042, 9 Am. L. B. 702, 6 Cinti. Law Bul. 69.

**What constitutes sufficient presentment.** "SEC. 72. PRESENTMENT FOR PAYMENT, TO BE SUFFICIENT, MUST BE MADE:

1. BY THE HOLDER OR BY SOME PERSON AUTHORIZED TO RECEIVE PAYMENT ON HIS BEHALF;
2. AT A REASONABLE HOUR ON A BUSINESS DAY;
3. AT A PROPER PLACE AS HEREIN DEFINED;
4. TO THE PERSON PRIMARILY LIABLE ON THE INSTRUMENT, OR IF HE IS ABSENT OR INACCESSIBLE, TO ANY PERSON FOUND AT THE PLACE WHERE THE PRESENTMENT IS MADE.

Presentment for payment must be made in the manner prescribed in this section and to be made in a manner that will charge the drawer and indorsers, it must be made at a reasonable hour on a business day by the holder or by some person acting for him to whom he has given authority to receive payment upon the instrument. Some one must be sent with the instrument who is authorized to receive the money upon it.<sup>7</sup> Therefore, if the person who takes the instrument for the purpose of presenting it for payment to the party obliged to pay it when it becomes due, is not authorized by the holder to collect it and surrender the instrument upon payment, or goes merely to notify him that the holder has the instrument and makes only an informal request, this will not be a sufficient presentment.<sup>8</sup>

The mere possession of an instrument payable to bearer is sufficient evidence of authority to present it for payment but would not be sufficient if the instrument is payable to order.<sup>9</sup> Something more is required of such an instrument and, while the authority to make presentment and receive payment need not be in writing, it must be shown by satisfactory proof, when required, that the person making presentment did so by authority of the

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7. Foss vs. Norris, 70 Me. 117.

Fowler Paper Co. vs. Jones Sales Bk. Co., 183 Ill. A. 310.

8. St. of N. Y. Natl. Bank vs. Kennedy, 145 App Div. (N.Y.) 669.

9. Doubleday vs. Kress, 50 N. Y. 410.

holder, if his indorsement does not appear upon the instrument.<sup>10</sup>

If the instrument is payable at the place of business the party who is to pay it, it must be presented there during business hours on a business day and if sent or taken there too long before the beginning or too long after the close of business hours, the presentment will not have been properly made.<sup>11</sup>

All days of the year are business days except Sundays and such holidays as are established by statute or by proclamation in the various States.

The person who makes presentment must go to the proper place, and he must have the instrument with him in order that he may be prepared to exhibit or surrender it if it becomes necessary to do so. (Sec. 74.) What is the proper place is defined in the next section. (Sec. 73.) Arriving at the proper place at the proper time, he must make the presentment in the manner required by Sec. 74 to the person who is to pay the instrument. If that person is absent or access to him is refused or cannot be had, presentment may be made to any one found at the place where presentment is to be made. Although the person found there may have no connection with the party primarily liable upon the instrument, presentment to him is good. If the instrument is presented to any person other than the party primarily liable to pay it, diligent inquiry ought to be made by the presenter to learn whether he has any authority to pay the instrument and whether or not he has any business connection with the party obliged to pay it. If payment is refused a careful record should be made upon the instrument, or in some other manner if the instrument is lost or mis-

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10. *Watt vs. Potter*, 29 Fed. Cas. 17,291.

*Robertson vs. Crane*, 27 Miss. 362, 61 Am. D. 520.

11. *Waring vs. Betts*, 90 Va. 46, 53.



placed, of the date and hour and the person to whom it was presented and of the reason given for the refusal.

Presentment and demand for payment by letter or by telephone may not be made and if attempted will not charge an indorser.<sup>12</sup> A waiver of presentment by telephone is good, however. (Sec. 82.)

**Place of presentment.** "SEC. 73. PRESENTMENT FOR PAYMENT IS MADE AT THE PROPER PLACE.

1. WHERE A PLACE OF PAYMENT IS SPECIFIED IN THE INSTRUMENT AND IT IS THERE PRESENTED;

2. WHERE NO PLACE OF PAYMENT IS SPECIFIED, BUT THE ADDRESS OF THE PERSON TO MAKE PAYMENT IS GIVEN IN THE INSTRUMENT AND IT IS THERE PRESENTED;

3. WHERE NO PLACE OF PAYMENT IS SPECIFIED AND NO ADDRESS IS GIVEN AND THE INSTRUMENT IS PRESENTED AT THE USUAL PLACE OF BUSINESS OR RESIDENCE OF THE PERSON TO MAKE PAYMENT;

4. IN ANY OTHER CASE IF PRESENTED TO THE PERSON TO MAKE PAYMENT WHEREVER HE CAN BE FOUND, OR IF PRESENTED AT HIS LAST KNOWN PLACE OF BUSINESS OR RESIDENCE."

The holder is deemed to have made a sufficient presentment if he has presented the instrument in the manner described in the preceding section, or has caused it to be done, at the place named in it as the place where presentment is to be made. This is true even if the place named is neither the residence nor place of business of the person who is to pay the instrument and he is known to be elsewhere, and not at that place, at the time of presentment, although in that case it would seem to be proper, even if it is not the duty of the presenter, to demand payment of the person who is to pay the instrument at the place where he is known to be if there is no one who is authorized to pay or refuse payment at the place named in the instrument.<sup>13</sup> But, notwithstanding

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12. Gilpin vs. Savage, 201 N. Y. 167.

13. Sulzbacher vs. Bank of Charleston, 86 Tenn. 201.  
Pierce vs. Struthers, 27 Pa. 249.



former decisions to the contrary, or decisions which intimate that an attempt ought to be made to find the person who is to pay the instrument if he is not at the place named in it and that place has been abandoned by him, the statute does not require this and it need not be done. It is the duty of the person primarily liable upon the instrument to provide the funds for its payment and have them ready at the place of payment in the hands of someone at that place who is authorized to pay the instrument, and it is equally the duty of the holder of the instrument to present it for payment at that place.<sup>14</sup>

If no place is mentioned but the address is given of the person who is to pay the instrument, it must be presented at that address. If both are given the place of payment mentioned in the body of the instrument is the place where it must be presented even if it conflicts with the address of the person who is to make payment. If the instrument is payable at a designated branch of a bank or Trust Company it must be presented at the branch designated, if it is in existence at the maturity of the instrument. Presentment at the principal office will not, in that case be good.<sup>15</sup> If the branch has been discontinued and is no longer doing business at the maturity of the instrument, presentment at the main bank will be proper.<sup>16</sup>

When the instrument mentions no place of payment and does not give the address of the person who is to pay it, it may be presented at either his usual place of business or residence.

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14. *Ironclad Mfg. Co. vs. Sackin*, 129 App. Div. (N. Y.) 555, 114 N. Y. S. 42.

15. *Ironclad Mfg. Co. vs. Sackin*, 129 App. Div. (N. Y.) 555, 114 N. Y. St. 42.

16. *Nashville Bank vs. Henderson*, 5 Yerg. (Tenn.) 104, 26 Am. D. 257.

In any other case, presentment may be made to the person obliged to pay the instrument at the place where he was last known to have been engaged in business or to have lived, or it may be made to him personally wherever he can be found if the instrument cannot be presented for payment in accordance with the other requirements of this section.

**Instrument must be exhibited.** “SEC. 74. THE INSTRUMENT MUST BE EXHIBITED TO THE PERSON FROM WHOM PAYMENT IS DEMANDED, AND WHEN IT IS PAID MUST BE DELIVERED UP TO THE PARTY PAYING IT.”

The person who makes presentment of the instrument must have it in his possession and, if requested to do so, must show it to the person of whom payment is demanded. When it is paid he must deliver it up to the party who pays it. If it is secured by collateral he must be prepared to produce and deliver up the collateral.<sup>17</sup> He has no right to require payment unless he is prepared to deliver up the instrument immediately upon its payment. If the instrument is lost or destroyed, presentment and demand for payment without the bill or note must be made on the day of maturity and while the person who is to pay it might properly refuse to do so, if his refusal is not for that reason, notice of its dishonor must be given immediately.<sup>18</sup> If the lost instrument is a bill of exchange and protest is necessary (see Sec. 152), it must be made in the manner described in Sec. 153 upon a copy or written particulars. (Sec. 160.) When the instrument or a copy is produced, it might be well to again present it for payment and if payment is then refused proceed in the same manner as if it had been dishonored upon the day of its maturity. The loss or destruction of the instrument will occasion complications in determin-

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17. *Ocean Nat'l Bank vs. Fant*, 50 N. Y. 474.

18. *Hinsdale vs. Miles*, 5 Conn. 331.

*Klots vs. Silver*, 118 N. Y. S. 1090.

ing the liability of the secondary parties the solution of which must depend upon the circumstances of each particular case.

**Presentment**

“SEC. 75. WHERE THE INSTRUMENT IS where instrument PAYABLE AT A BANK, PRESENTMENT FOR PAY-payable at bank. MENT MUST BE MADE DURING BANKING “Nebraska.

HOURS,<sup>a</sup> UNLESS THE PERSON TO MAKE PAYMENT HAS NO FUNDS THERE TO MEET IT AT ANY TIME DURING THE DAY, IN WHICH CASE PRESENTMENT AT ANY HOUR BEFORE THE BANK IS CLOSED ON THAT DAY IS SUFFICIENT.”

If an instrument is to be paid at a bank, it must be presented during banking hours unless the person who is to pay it has not at any time during the day on which it is presented for payment, sufficient money at the bank named with which to pay it. In that case it may be presented at the bank after banking hours but before the bank is closed for the day. Banking hours are those hours during which the bank is open for business of receiving and paying out money, but this may depend upon local custom and in some localities a presentment at any time while the bank remains open for business is deemed to be sufficient.<sup>18a</sup> Ordinarily, payment at a bank ought to be demanded near the close of banking hours, for if the demand is made early in the day and payment is not obtained, and the person who is to pay the instrument later deposits sufficient money to pay it, the early demand will be considered premature.<sup>19</sup> The early presentment is sufficient to charge secondary parties, but the person obliged to pay the instrument would not be chargeable with fees and costs on protest after the pre-

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18a. *Columbian Bk. vs. Bowen*, 134 Wis. 218.

*Columbia-Knickerbocker Tr. Co. vs. Miller*, 156 App. Div. (N. Y.) 810.

*Citizens Central Bk. vs. New Amsterdam Nat. Bk.*, 128 App. Div. (N. Y.) 554.

19. *German-American Bank vs. Milliman*, 31 Misc. (N. Y.) 87, 65 N. Y. S. 242.

mature presentment if it is shown that he had sufficient funds at bank to pay the instrument before the close of banking hours on that day.

Observe that by Section 2 of Section 72 the presentment must be made at a "reasonable hour." If it is not convenient to present the instrument at a reasonable hour at the bank at which it is payable, it is the custom to send the instrument to the bank where it is to be paid and leave it there until the close of business of the day on which it is payable. (Also see Sec. 87.)

**Presentment where principal is dead.** "SEC. 76. WHERE THE PERSON PRIMARILY LIABLE ON THE INSTRUMENT IS DEAD, AND NO PLACE OF PAYMENT IS SPECIFIED, PRESENTMENT FOR PAYMENT MUST BE MADE TO HIS PERSONAL REPRESENTATIVE, IF SUCH THERE BE, AND IF WITH THE EXERCISE OF REASONABLE DILIGENCE, HE CAN BE FOUND."

If the person who is first of all liable to pay the instrument is dead at the time payment becomes due and there is no place of payment specified, its presentment for payment must be made to his personal representative. The personal representative of a dead person is the executor or administrator of his estate, acting by appointment of some court. To ascertain who is the proper person to whom presentment should be made when the person primarily liable upon the instrument is dead, the holder is required to use reasonable diligence, which means, he is required to make such active inquiry and effort to learn who he is and where he is to be found as an **ordinarily prudent man** would make under similar circumstances to protect his own interests.<sup>19a</sup>

If there are two or more executors or administrators of the decedent's estate, presentment to one of them is sufficient. If the personal representative of the deceased party prove to be one who is himself a party to the bill,

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19a. Reed vs. Spear, 107 App. Div. (N. Y.) 144.



presentment to him in his representative capacity is nevertheless required.<sup>20</sup>

If it cannot be determined who is the proper personal representative of the deceased person or where he may be found, the presentment should be made at the decedent's late place of residence.<sup>21</sup> If no personal representative of the deceased person can be found, the holder may make presentment to the widow or other member of the family of the deceased at his residence and if the instrument is not paid he must proceed with the steps necessary upon dishonor.<sup>22</sup>

**Presentment**

**to persons liable as partners.**

“SEC. 77. WHERE THE PERSONS PRIMARILY LIABLE ON THE INSTRUMENT ARE LIABLE AS PARTNERS, AND NO PLACE OF PAYMENT IS SPECIFIED, PRESENTMENT FOR PAYMENT MAY BE MADE TO ANY ONE OF THEM, EVEN THOUGH THERE HAS BEEN A DISSOLUTION OF THE FIRM.”

If persons who are partners are primarily liable upon the instrument, or if having become liable as partners, their partnership has been dissolved before the time when presentment must be made and no place of payment is named in the instrument, it may be presented to either of them, notwithstanding the fact that the partnership has been dissolved. Presentment to one of several partners or former partners is sufficient and it may be made in the manner prescribed in Section 73. If a place is named in the instrument as the place where it is to be presented for payment, a presentment at that place is a proper presentment even though the partnership has dissolved or ceased to do business there.<sup>23</sup>

**Presentment to joint debtors.**

“SEC. 78. WHERE THERE ARE SEVERAL PERSONS, NOT PARTNERS, PRIMARILY LIABLE ON THE INSTRUMENT, AND NO PLACE OF PAYMENT IS SPECIFIED, PRESENTMENT MUST BE MADE TO THEM ALL.”

20. *Magruder vs. Union Bank*, 3 Pet. (U. S.) 87, 87 L. Ed. 612.

21. *Washington Bank vs. Reynolds*, 2 Fed. Cas. No. 954.

22. *Washington Bank vs. Reynolds*, 2 Fed. Cas. (U. S.) 954.

*Reed vs. Spear*, 107 App. Div. (N. Y.) 144, 94 N. Y. S. 1007.

23. *Cox vs. New York St. Bank*, 100 U. S. 704, 25 L. Ed. 739.



Several persons may join in the execution of the instrument and thus all become primarily liable but not as partners. These are called joint makers or acceptors, as the case may be, and in order to be sufficient to charge the indorsers upon their instrument, presentment must be made to each of them if no place of payment is named in the instrument. If they reside in different cities this cannot, of course, be done. In that case the saving clause of Sec. 82 will dispense with presentment to those to whom it cannot be made.

If a place of payment is named, presentment must be made there and it is good even if none of the joint makers or acceptors are found at that place. And if only one is found there, presentment to him is sufficient. (Sec. 72.)

**When presentment not required to charge the drawer.**

“SEC. 79. PRESENTMENT FOR PAYMENT IS NOT REQUIRED IN ORDER TO CHARGE THE DRAWER WHERE HE HAS NO RIGHT TO EXPECT OR REQUIRE THAT THE DRAWEE OR ACCEPTOR WILL PAY THE INSTRUMENT.”

Unlike the maker of a promissory note, the drawer of a draft or bill of exchange is entitled to have the instrument presented for payment for he is a secondary party, liable to pay only if the drawee or acceptor does not. If the instrument remains unpaid at maturity he will be discharged from liability by the holder's failure to make presentment and demand and give him the notice to which he is entitled. (Sec. 89.) However, if it should appear that the drawer has no right to expect the drawee or acceptor to pay the instrument, or no right to require him to do so, as, for example, when he draws the bill for his own accommodation and, having agreed to do so, he does not put the acceptor in funds with which to pay it when due, he is not then entitled to notice of its dishonor. The failure of the holder to present the instrument and give him notice of its dishonor will not, under these cir-

cumstances, release him from liability. But the fact alone that the drawer had no funds in the hands of the drawee when he drew the bill is not sufficient to dispense with presentment of the bill for payment,<sup>24</sup> unless he drew with the understanding that he would provide the acceptor with funds to pay it at maturity and failed to do so.

**When presentment not required to charge the indorser.**  
**Illinois.**

“SEC. 80. PRESENTMENT FOR PAYMENT IS NOT REQUIRED IN ORDER TO CHARGE AN INDORSER WHERE THE INSTRUMENT WAS MADE OR ACCEPTED FOR HIS ACCOMMODATION<sup>a</sup> AND HE HAS NO REASON TO EXPECT THAT THE INSTRUMENT WILL BE PAID IF PRESENTED.”

This section effects a very important change in the law in respect to the right of an indorser who is himself the accommodated party to require presentment for payment. Until its enactment such a party was held not to be discharged from liability upon the instrument under any circumstances, by the failure of the holder to properly present it for payment at maturity. But there is now a very important qualifying clause in the section which considerably modifies this old and well established rule, so that now, if it can be shown that the accommodated indorser had any reason to expect the maker to pay the instrument if presented, he will be discharged by the failure of the holder to make presentment.<sup>25</sup> None of the cases cited directly decides the point as I have stated it and I have not been able to find any that does, but they hold, inferentially, that if an accommodated indorser has any reason to expect that the instrument will be paid if presented, a failure to present it will discharge him. The

24. Life Insurance Co. vs. Pendleton, 112 U. S. 696, 708.  
 Welch vs. B. C. Taylor Co., 82 Ill. 579, 581.

25. McDonald vs. Luckenbach, 170 Fed. 434; 95 C. C. A. 60A.  
 Belch vs. Roberts (Mo.), 177 S. W. 1062.  
 Murray vs. Third Nat'l Bk., 234 Fed. 481, 148 C. C. A. 247.

section now makes applicable to a promissory note or an acceptance which is made for the accommodation of an indorser, a rule similar to that enunciated in Sec. 79 which is applicable to the drawer of a bill, and it seems to provide, by logical inference, that the instrument must be presented for payment in order to charge the accommodated indorser, if he has any reason to expect the maker or acceptor to pay it, as, for example, if he has put into his hands, or under his control, the money with which to pay the instrument at maturity. Except in such States as have omitted the words "and he has no reason to expect that the instrument will be paid if presented" it is now necessary to present the instrument for payment in order to charge an indorser for whose accommodation it was made or accepted, unless it is known, and can be shown, that he had no reason to expect it to be paid if presented. Section 115, wherein it is provided that notice of dishonor need not be given an indorser for whose accommodation the instrument was made or accepted, does not contain a similar qualification.

**When delay in making presentment is excused.** "SEC. 81. DELAY IN MAKING PRESENTMENT FOR PAYMENT IS EXCUSED WHEN THE DELAY IS CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF THE HOLDER, AND NOT IMPUTABLE TO HIS DEFAULT, MISCONDUCT, OR NEGLIGENCE. WHEN THE CAUSE OF DELAY CEASES TO OPERATE, PRESENTMENT MUST BE MADE WITH REASONABLE DILIGENCE."

While by Sec. 71 the instrument, if payable upon a day certain, must be presented upon the day when it falls due, delay in making the presentment is excused when it is caused by circumstances beyond the control of the holder, including a sudden and severe sickness, and not chargeable to his failure to perform a duty which he is himself obliged to perform, or to his own wrongful act, care-

lessness or neglect.<sup>26</sup> The holder owes to all parties to the instrument the duty to act promptly, in good faith and carefully, in presenting the instrument for payment, and if he does so and yet, by some circumstances beyond his control, it is not possible for him to present the instrument for payment upon the day when presentment ought to be made, the delay will be excused. The cases cited enumerate some of the circumstances which do and others which do not dispense with presentment or excuse delay in making it. Upon the removal of the cause of the delay the holder must make the presentment and he must proceed with reasonable diligence. The circumstances which are relied upon by the holder as an excuse for presentment at the proper time, must be alleged and proved by him in any action which he may bring upon the instrument to charge any of the parties liable upon it who are entitled to notice of its proper and timely presentment and dishonor.

When

presentment may  
be dispensed  
with.

“SEC. 82. PRESENTMENT FOR PAYMENT  
IS DISPENSED WITH:

1. WHERE, AFTER THE EXERCISE OF REASONABLE DILIGENCE PRESENTMENT AS REQUIRED BY THIS ACT CAN NOT BE MADE;

2. WHERE THE DRAWEE IS A FICTITIOUS PERSON;

3. BY WAIVER OF PRESENTMENT, EXPRESS OR IMPLIED.”

Presentment for payment need not be made at all if after the exercise of reasonable diligence it cannot be made in the manner required in this Act. It need not be made of a bill of exchange, or even attempted, if the holder learns that the drawee is a fictitious person, that is, one who is not real or does not exist, or, as the Act

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26. *Young vs. Exchange Bank*, 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915 B 148.

*Aebi vs. Bank of Evansville*, 124 Wis. 73, 102 N. W. 329, 68 L. R. A. 964, 109 Am. St. Rep. 925.

*Wilson vs. Senier*, 14 Wis. 380.



has been interpreted to mean, one who though living and real has no interest in the instrument. (Sec. 9.)

It is also dispensed with by waiver. The waiver may be expressed, which is usually done by incorporating the waiver in the body of the instrument before its issue, or the person waiving presentment may write words at his signature, or may utter spoken words at the time of transfer which expressly declare that he does not require presentment. The waiver may also be implied from his words or conduct. The express waiver may be made before, at or after the maturity of the instrument. It need not be in writing but it is obvious that when an indorser expresses his willingness to waive presentment for payment, and he writes upon the instrument, at his signature, words expressing that he does so, this will settle all question of his intention. But if the waiver is expressed in a separate writing, by letter or telegram<sup>27</sup> or in spoken words<sup>28</sup> it is equally binding although, of course, in that case, the proof is more difficult. No consideration need be given for the waiver, whether made before or at,<sup>29</sup> or after the maturity of the instrument.<sup>30</sup> It need not be made by the party himself but may be made by his authorized agent.<sup>31</sup>

A waiver of presentment for payment and notice of non-payment may be implied from any words or acts of the person it is sought to charge, or from any one who

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27. Bankers State Bank vs. Mason Hand Lathe Co., 121 Iowa, 570, 97 N. W. 70.

Corner vs. Pratt, 138 Mass. 446.

28. Churchill vs. Yeatman-Gray Groc. Co., 111 Ark. 529, 164 S. W. 283.

29. Neal vs. Wood, 23 Ind. 523.

Robinson vs. Barnett, 19 Fla. 670, 45 Am. R. 24.

Uhler vs. Farmers Nat. Bank, 64 Pa. 406.

30. Burgettstown Nat. Bank vs. Nill, 213 Pa. 456, 63 A. 186, 3 L. R. A. N. S. 1079-Note, 5 Ann. Cas. 476 & Note.

31. Fowler vs. Fleming, 1 McMul. (S. C. L.) 282.



speaks or acts by his authority in the matter before, at, or after the maturity of the instrument, if the words or acts are of such character as will satisfy any reasonable person that a waiver was intended, or if they are such as will justify him in believing that the drawer or indorser intended to dispense with presentment of the instrument for payment.<sup>32</sup> A waiver is also implied if the words or acts are uttered or done in such a manner as will justify the holder in believing that they are intended to induce him to forego the usual proceedings necessary to fix the liability of the drawer and indorser.<sup>33</sup>

A waiver will not be inferred from doubtful language or acts, and if the words<sup>34</sup> or acts proceed from any person other than the one to be bound by them, his authority to waive must be clear and without doubt or it will not bind the person for whom he assumes to act. (Also see Secs. 109, 110 and 111.)

Of course, a waiver binds no one except that person who either expressly makes or authorizes it or against whom, by reason of his words or acts, it is implied (Sec. 110); and where there are several parties to the instrument who are entitled to presentment and notice, a waiver by one will not operate against the others. The language or acts relied upon to sustain a waiver by implication will be strictly construed and will not be interpreted beyond the fair meaning of the terms used.<sup>35</sup>

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32. Mayer & Bros. Appeal, 87 Pa. 129.

33. Sigerson vs. Matthews, 20 How. (U. S.) 496, 15 L. Ed. 989.  
Boyd vs. Bank of Toledo, 32 Ohio St. 526.  
Worley vs. Johnson, 60 Fla. 295.

34. Ross vs. Hurd, 71 N. Y. 14.  
Worley vs. Johnson, 60 Fla. 295.

35. Glidden vs. Chamberlain, 167 Mass. 486, 46 N. E. 103, 57 Am. S. R. 477.  
Lititz Nat. Bank vs. Siple, 145 Pa. 49, 22 A. 208.

**When instrument dishonored by non-payment.** “SEC. 83. THE INSTRUMENT IS DISHONORED BY NON-PAYMENT WHEN,

1. IT IS DULY PRESENTED FOR PAYMENT AND PAYMENT IS REFUSED OR CANNOT BE OBTAINED; OR

2. PRESENTMENT IS EXCUSED AND THE INSTRUMENT IS OVERDUE AND UNPAID.”

The dishonor of the instrument fixes the liability of its parties and the holder may proceed upon the dishonor if he has properly presented the instrument for payment and payment is refused, or if he cannot obtain payment at the place where it is to be made. A neglect to pay the instrument after presentment and demand is equivalent to a refusal to do so. The instrument is also dishonored when it is overdue and remains unpaid and presentment is excused.

The use of the word “excused” in this section would seem to be unfortunate and it properly means “dispensed with.” That term would have been more appropriate, although it is sometimes used as a synonym for the former. The Act nowhere “excuses” presentment. Delay in presentment is “excused” by Sec. 81, but that section also provides that when the cause for delay ceases to operate, presentment “must” be made with reasonable diligence.

It seems, therefore, that this section must be understood to mean that an instrument is dishonored when it is overdue and unpaid and presentment has been dispensed with in accordance with Section 82.

**Liability of person secondarily liable when instrument dishonored.** “SEC. 84. SUBJECT TO THE PROVISIONS OF THIS ACT, WHEN THE INSTRUMENT IS DISHONORED BY NON-PAYMENT AN IMMEDIATE RIGHT OF RECOURSE TO ALL PARTIES SECONDARILY LIABLE THEREON ACCRUES TO THE HOLDER.”

The person or persons who by the terms or the nature of the instrument are required to pay it are the persons

primarily liable and all other parties are secondarily liable (Sec. 192). The parties secondarily liable are, therefore, not required to pay the instrument until it has become dishonored by reason of the failure of the person primarily liable to do so. When the instrument has become dishonored, however, all parties secondarily liable are immediately liable to the holder who can not be required to look to a primary party for payment, but may proceed at once against all the parties, subject only to the provisions of this Act. He may proceed against them separately until full satisfaction is obtained, or join them all in one action upon the instrument.<sup>36</sup>

Time of maturity. "SEC. 85. EVERY NEGOTIABLE INSTRUMENT<sup>e</sup> IS PAYABLE AT THE TIME FIXED THEREIN WITHOUT GRACE.<sup>a</sup> WHEN THE DAY OF MATURITY FALLS UPON SUNDAY, OR A HOLIDAY, THE INSTRUMENT IS PAYABLE ON THE NEXT SUCCEEDING BUSINESS DAY.<sup>b</sup> INSTRUMENTS FALLING DUE<sup>c</sup> ON SATURDAY ARE TO BE PRESENTED FOR PAYMENT ON THE NEXT SUCCEEDING BUSINESS DAY, EXCEPT THAT INSTRUMENTS PAYABLE ON DEMAND MAY, AT THE OPTION OF THE HOLDER, BE PRESENTED FOR PAYMENT BEFORE TWELVE O'CLOCK NOON ON SATURDAY WHEN THAT ENTIRE DAY IS NOT A HOLIDAY."<sup>d</sup>

<sup>a</sup>Massachusetts,  
New Hampshire,  
N. Carolina,  
Iowa.  
<sup>b</sup>Arizona,  
Colorado,  
Kentucky,  
Wisconsin.  
<sup>c</sup>Delaware,  
Kansas,  
Massachusetts,  
New York.  
<sup>d</sup>Iowa.  
<sup>e</sup>Rhode Island.

Every negotiable instrument matures and must be paid on the day when it is expressed to be due if a fixed or determinable date of maturity is mentioned in the instrument, and it must be presented for payment on that day unless a delay is excused. There are no days of grace except in those states indicated in the marginal note. If the instrument falls due on Sunday or upon a holiday, or upon a Saturday if it is not a demand instrument, it must be presented on the next succeeding business day.

36. Moore vs. Rogers, 19 Ill. 347.

Morrison vs. Fishell. 64 Ind. 177.

An instrument payable on demand may be presented for payment on Saturday when that day is not an entire holiday if the presentment is made before twelve o'clock noon and it need not again be presented on the next succeeding business day. To make presentment of a demand instrument on Saturday or to wait until the next succeeding business day is at the option of the holder, but if the presentment is made on Saturday and the instrument is dishonored, the notice of dishonor must be given on that day or the next business day. (Sec. 194.)

Time; how  
computed.

“SEC. 86. WHERE THE INSTRUMENT IS PAYABLE AT A FIXED PERIOD AFTER DATE, AFTER SIGHT, OR AFTER THE HAPPENING OF A SPECIFIED EVENT, THE TIME OF PAYMENT IS DETERMINED BY EXCLUDING THE DAY FROM WHICH THE TIME IS TO BEGIN TO RUN, AND BY INCLUDING THE DATE OF PAYMENT.”

To determine when an instrument must be paid if it is payable at a fixed number of days after date, sight, or the happening of an event which it names, the day of its date, sight, or of the happening of the event is not included but the last day of the period for which it is to run is included and becomes the day upon which presentment for payment must be made, unless it is excusably delayed, or unless it is a Saturday, Sunday or a holiday. (Sec. 85.)

Rule where  
instrument  
payable at bank.

<sup>a</sup>Illinois,

Nebraska,

So. Dakota.

<sup>b</sup>Minnesota.

<sup>c</sup>Missouri.

“SEC. 87. <sup>a</sup>WHERE THE INSTRUMENT IS MADE PAYABLE AT A BANK,<sup>b</sup> IT IS EQUIVALENT TO AN ORDER TO THE BANK TO PAY THE SAME FOR THE ACCOUNT OF THE PRINCIPAL DEBTOR THEREON.”<sup>c</sup>

When an instrument is made payable at a bank the effect of making it so payable is the same as if an order had been given to the bank to pay it, and when such an instrument is presented to the bank named it is obliged to pay it for the account of the principal debtor out of any sufficient funds he may



have to the credit of his general account on the day of its maturity which are not specially applicable to another purpose.<sup>37</sup> An instrument so made payable becomes the equivalent of a check.<sup>38</sup> Therefore, if an instrument thus payable is not charged to the account of the party making it payable at a bank and who has available funds there to pay it at maturity, a collecting bank, if it has the instrument for collection, would be liable to the owner of the instrument in damages if a loss afterward result from its neglect. If the bank at which such an instrument is payable has the instrument as holder, for its own account, its failure to obtain payment out of the funds appropriable for that purpose will discharge parties secondarily liable upon it.<sup>38a</sup> A lesser sum than the full amount due upon the instrument need not be appropriated.

**What constitutes payment in due course.** "SEC. 88. PAYMENT IS MADE IN DUE COURSE WHEN IT IS MADE AT OR AFTER THE MATURITY OF THE INSTRUMENT TO THE HOLDER THEREOF IN GOOD FAITH AND WITHOUT NOTICE THAT HIS TITLE IS DEFECTIVE."

Payment in due course discharges the instrument and relieves the person making payment from all further obligation upon it. (Sec. 119.) It is made in due course if it is made at the time or after the instrument becomes due and payable and is made to the holder or to some person authorized by him to receive payment.<sup>39</sup> Such a payment will discharge the person obliged to pay the instru-

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37. Commercial Bank vs. Henninger, 105 Pa. St. 496.  
Bedford Bank vs. Acoam, 125 Ind. 584.  
German Natl. Bank vs. Foreman, 138 Pa. St. 474.

38. Baldwin's Bank vs. Smith, 215 N. Y. 76.  
Aetna Natl. Bank vs. Fourth Natl. Bank, 46 N. Y. 82, 88.

38a. Mechanics & Trader's Bk. vs. Seitz, 150 Pa. St. 632.

39. Madison vs. Cabalek, 86 Ill. A. 450.  
Marling vs. Nommensen, 127 Wis. 363, 106 N. W. 844, 115  
Am. S. R. 1017, 5 L. R. A. N. S. 412, 7 Ann. Cas. 364.



ment even if made to the wrong person or to one who had no title to the instrument, if it is made in good faith and without notice of any deception, or defect in the holder's title.<sup>40</sup>

But payment made before the instrument becomes due is not payment in due course and, if made to the wrong person or to one whose title to the instrument is defective, the person paying it is not discharged from liability to the real owner of the instrument, notwithstanding that the person asking payment has the instrument in his possession and presents it for payment. A payment before maturity is no defense against a bona fide holder and the payer will make it at his own risk.<sup>41</sup> It binds only the party receiving the payment.

It follows, therefore, that one liable to pay an instrument should not do so before maturity unless he has satisfied himself positively that the person asking payment is entitled to receive it. You will please refer to Subdivision 8 for the general subject of discharge of the instrument and discharge of parties.

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40. Bambridge vs. Louisville, 83 Ky. 285, 4 Am. S. R. 153.

41. Williams vs. Keyes, 90 Mich. 290. 51 N. W. 520, 30 Am. S. R. 438.

Watson vs. Wyman, 161 Mass. 96, 99

## SUBDIVISION VII.

## NOTICE OF DISHONOR.

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In order to charge the parties secondarily liable upon a negotiable instrument they must be given notice of its dishonor by non-payment or non-acceptance unless, by reason of the exceptions provided in the Act, the notice may be dispensed with. The giving of notice is made an important duty and any oversight or omission to give it promptly, upon dishonor of the instrument, or a neglect to observe the necessary formalities in giving it within the time provided in this Act, will release the parties en-

titled to notice and they cannot again be made liable upon the instrument except by their own voluntary act.<sup>1</sup>

The following sections of the Act prescribe the manner in which, the time at which, and the parties to whom the notice must be given, as well as by whom, and every holder is obliged to observe carefully all of their provisions upon this subject if he would save his rights upon the instrument. He is required to act with promptness and dispatch when called upon by default in the acceptance or payment of the instrument to convey the information of its dishonor to the secondary parties to whom he looks for its payment, unless the giving of the notice is dispensed with or delay in giving it is excused. It is apparent, therefore, that a knowledge of how to proceed upon dishonor of the instrument is very essential to his safety.

The general rule in regard to notice applicable to the three forms of negotiable instruments to which this Act particularly applies, may be understood to be this. The holder in whose hands the instrument is dishonored is required to give notice to every party whom he intends to hold. He may give it to all or select only those to whom he looks for payment, even if they be quite remote. The notice he gives will fix the liability of the parties to whom it is given to him and to persons claiming through him or to whom he is liable, and to all parties prior to the holder who have a right of recourse against the parties notified. Intermediate and prior secondary parties to whom notice is not given will be discharged. Therefore, when an indorser receives notice of the dishonor of the instrument he ought, for his own protection, himself to give

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1. *Aebi vs. Bank of Evansville*, 124 Wis. 73, 102 N. W. 329.  
*Smith vs. Rowland*, 18 Ala. 665.

notice to the parties to whom he looks for payment. The provisions of the Act in respect to notice are as follows:

**To whom notice of dishonor must be given.** “SEC. 89. EXCEPT AS HEREIN OTHERWISE PROVIDED, WHEN A NEGOTIABLE INSTRUMENT HAS BEEN DISHONORED BY NON-ACCEPTANCE OR NON-PAYMENT, NOTICE OF DISHONOR MUST BE GIVEN TO THE DRAWER AND TO EACH INDORSER, AND ANY DRAWER OR INDORSER TO WHOM SUCH NOTICE IS NOT GIVEN IS DISCHARGED.”

If the instrument which becomes dishonored by non-acceptance or non-payment is a bill of exchange notice of its dishonor must be given to the drawer and to each indorser. If the dishonor is of a promissory note, the notice is required to be given to each indorser. The maker is not entitled to notice.

**By whom given.** “SEC. 90. THE NOTICE MAY BE GIVEN BY OR ON BEHALF OF THE HOLDER, OR BY OR ON BEHALF OF ANY PARTY TO THE INSTRUMENT WHO MIGHT BE COMPELLED TO PAY IT TO THE HOLDER, AND WHO, UPON TAKING IT UP, WOULD HAVE A RIGHT TO REIMBURSEMENT FROM THE PARTY TO WHOM THE NOTICE IS GIVEN.”

The person who ought to, and who usually does give the notice of dishonor, is the holder of the instrument at the time of its dishonor, or it is given by an agent acting for him. The agent's authority need not be in writing.<sup>2</sup> The notice may be given by any party or by any person on behalf of any party who is liable upon the instrument and who might be compelled to pay it to the holder and would thereupon have a right to recover from the party to whom the notice is given. And a party need not wait until he himself receives notice before giving notice of dishonor to other parties whom he desires to hold. He may give the notice as soon as he becomes aware of the dishonor of the instrument, no matter what his source or means of information. When he receives notice of the dishonor of the instrument, however, he

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2. *Utica Bank vs. Smith*, 18 Johns. (N. Y.) 230.

must give notice to other parties to whom he looks for payment within the time prescribed in this Act unless he has already done so or has knowledge that the holder at the time of dishonor has already given the notice to them.

This section may therefore be understood to mean that all parties to the instrument, except those primarily liable and those not entitled to receive notice, such as one for whose accommodation the instrument is made, may give notice of dishonor<sup>3</sup> but it may not be given by a stranger. A stranger is one who is neither a party nor the representative of a party to the instrument, and this definition includes a drawee who has refused to accept and a party who has been discharged.<sup>4</sup>

**Notice given by agent.** "SEC. 91. NOTICE OF DISHONOR MAY BE GIVEN BY AN AGENT EITHER IN HIS OWN NAME OR IN THE NAME OF ANY PARTY ENTITLED TO GIVE NOTICE, WHETHER THAT PARTY BE HIS PRINCIPAL OR NOT."

When the notice is given by one person as the agent of another, he may give it in his own name or he may give it in the name of the person for whom he is acting. He may give the notice in the name of any other party who is entitled to give notice even if the party in whose name he gives it is not the person for whom he is acting as agent, but if given in a wrong name it is not a sufficient notice.<sup>5</sup> As already stated, his authority need not be in writing.<sup>6</sup>

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3. *Traders Natl. Bank vs. Jones*, 104 App. Div. 433, 93 N. Y. Supp. 768.

4. *Brailsford vs. Williams*, 15 Md. 150, 74 Am. D. 559.

*Lawrence vs. Miller*, 16 N. Y. 235.

*Payne vs. Patrick*, 21 Tex. 680.

*Harrison vs. Ruseoe*, 15 L. J. Exchg. 110, 15 M. & W. 231.

*Stanton vs. Blossom*, 14 Mass. 116.

5. *Cabot Bank vs. Warner*, 92 Mass. 522.

6. *Utica Bank vs. Smith*, 18 Johns. (N. Y.) 230.



**Effect of notice given on behalf of holder.**

“SEC. 92. WHERE NOTICE IS GIVEN BY OR ON BEHALF OF THE HOLDER, IT ENURES FOR THE BENEFIT OF ALL SUBSEQUENT HOLDERS AND ALL PRIOR PARTIES WHO HAVE A RIGHT OF RECOURSE AGAINST THE PARTY TO WHOM IT IS GIVEN.”

If the notice of dishonor is given by the holder, or by someone for him, it operates for his benefit and for the benefit of all persons who afterward become holders of the instrument. It operates also for the benefit of all parties before the holder giving notice who have a right to enforce the instrument against the parties to whom the notice is given. In other words, when the holder has given notice of dishonor to all the parties to whom it is required to be given it is not necessary that any other party give it. The notice by the holder operates for the benefit of all,<sup>7</sup> but he is bound only to give it to his immediate indorser if he looks to him alone for recourse.<sup>8</sup>

**Effect where notice is given by party entitled thereto.**

“SEC. 93. WHERE NOTICE IS GIVEN BY OR ON BEHALF OF A PARTY ENTITLED TO GIVE NOTICE, IT ENURES FOR THE BENEFIT OF THE HOLDER AND ALL PARTIES SUBSEQUENT TO THE PARTY TO WHOM NOTICE IS GIVEN.”

If the notice is given by a party to the instrument who is not the holder but who is entitled to give notice, or if it is given by someone for him, the notice operates for the benefit of the holder of the instrument as well as for all who became parties after that one to whom the notice is given. It thus fixes the liability to them of the party to whom the notice is given and fixes it as well to that party from whom he receives the notice.

**When agent may give notice.**

“SEC. 94. WHERE THE INSTRUMENT HAS BEEN DISHONORED IN THE HANDS OF AN AGENT, HE MAY EITHER HIMSELF GIVE NOTICE TO THE PARTIES LIABLE THEREON, OR HE MAY GIVE NOTICE TO HIS PRINCIPAL.

7. *Traders Natl. Bank vs. Jones*, 104 App. Div. 433, 93 N. Y. Supp. 768.

8. *West River Bank vs. Taylor*, 34 N. Y. 128, 131.  
*Linn vs. Horton*, 17 Wis. 157.

IF HE GIVE NOTICE TO HIS PRINCIPAL, HE MUST DO SO WITHIN THE SAME TIME AS IF HE WERE THE HOLDER, AND THE PRINCIPAL, UPON THE RECEIPT OF SUCH NOTICE, HAS HIMSELF THE SAME TIME FOR GIVING NOTICE AS IF THE AGENT HAD BEEN AN INDEPENDENT HOLDER.”

If the instrument is in the hands of an agent at the time of its dishonor, a collecting bank for example, the agent may give notice of its dishonor to the parties liable upon it or he may give the notice to his principal alone.<sup>9</sup> If the agent gives the notice he must do it within the time fixed in Sections 103 and 104. If he fails to give his principal notice within the time in which it is required to be given his neglect will be imputable to his principal and will destroy his principal's right to give notice, notwithstanding that after receiving notice from his agent, the principal may give or attempt to give the notice to his prior parties within the time prescribed in this Act.<sup>10</sup> A collecting bank will be liable to its customer if it fails in this respect.<sup>11</sup> A collecting agent ought not to take anything but money in payment of the instrument, but if it receives a check which afterward proves to be worthless, it must at once proceed to give notice of dishonor and it must do this within the time required in this subdivision of the Act.<sup>12</sup> Upon receiving the notice, the principal, that is, the person for whom it is acting, must in turn give the notice within the prescribed time after receiving notice from his agent.

When notice  
sufficient.

<sup>a</sup>Kentucky.

“SEC. 95. A WRITTEN NOTICE<sup>a</sup> NEED NOT BE SIGNED, AND AN INSUFFICIENT WRITTEN NOTICE MAY BE SUPPLEMENTED AND VALIDATED BY VERBAL COMMUNICATION. A MISDESCRIPTION OF

9. Gleason vs. Thayer, 87 Conn. 248.

Shea vs. Vahey, 215 Mass. 80.

10. Rosson vs. Carroll, 90 Tenn. 90.

Sampson vs. Turney, 5 Hump. (Tenn.), 419, 42 Am. D. 443.

11. Brill vs. Jefferson Bank, 159 App. Div. (N. Y.) 461.

12. Young vs. Exchange Bank, 152 Ky. 293, 153 S. W. 444, Ann. Cas. 1915 B. 148.

THE INSTRUMENT DOES NOT VITIATE THE NOTICE UNLESS THE PARTY TO WHOM THE NOTICE IS GIVEN IS IN FACT MISLED THEREBY."

The person giving written notice of dishonor need not sign it. If he fails to do so and the notice contains all the requirements of the next section, it is nevertheless good.

If a written notice omits any of the requirements of the next section they may be supplied by verbal communication and this will make good a notice which would otherwise be invalid. If the notice incorrectly describes the instrument dishonored it is not, for that reason, invalid unless the party to whom it is given is actually misled by the mistake.

**Form of notice.**

"SEC. 96. THE NOTICE MAY BE IN WRITING OR MERELY ORAL<sup>a</sup> AND MAY BE GIVEN IN ANY TERMS WHICH SUFFICIENTLY IDENTIFY THE INSTRUMENT, AND INDICATE THAT IT HAS BEEN DISHONORED BY NON-ACCEPTANCE OR NON-PAYMENT. IT MAY IN ALL CASES BE GIVEN BY DELIVERING IT PERSONALLY OR THROUGH THE MAILS."

Notwithstanding that the preceding section will permit the correction of any mistake in the written notice if the party receiving it has not been misled by the mistake, care must be used in preparing the notice, and it should correctly describe the date, amount and nature of the instrument, by whom made or accepted and indorsed, and distinctly state the fact that it was presented for payment or acceptance, as the case may be, and that payment or acceptance was demanded and was refused. It should also show by whom the notice is given, state where the dishonored instrument is held and the names of all parties to whom notice of its dishonor has been given. However, the terms of the notice are not prescribed by the Act in any particular. Any words may be written or spoken to the party to be notified which describe the instrument well enough to enable him to iden-

tify it and clearly make him understand that the instrument has not been accepted or paid upon presentment, as the case may be, and that the holder looks to him for payment.<sup>13</sup> The reasons given by the party refusing to accept or pay the instrument need not be stated in it but they may be for the information of the party notified. If the instrument is protested, however, the cause of protest and the reason given for non-payment or non-acceptance must be stated in the protest. (See Sec. 153.)

The notice may be given personally or sent through the mails and when the addresses of all parties to be notified are known to the holder, he will encounter no difficulty in sending the notices promptly and properly. When the parties or their addresses are unknown to the holder it is the very general custom to make out as many copies of the notice as there are separate parties to be notified and send them all to the immediate party from whom the holder obtained title. He in turn will forward the notices to the next before him and so on back to the party who originally negotiated the instrument. It is entirely proper to do this.<sup>14</sup> Each party who receives notice is entitled under Sec. 107, to the same time for giving notice to parties liable to him as the holder has in whose hands the instrument meets with dishonor. A notice given by telephone is good if it is clearly shown that the party to be notified was communicated with.<sup>15</sup>

**To whom notice may be given.** "SEC. 97. NOTICE OF DISHONOR MAY BE GIVEN EITHER TO THE PARTY HIMSELF OR TO HIS AGENT IN THAT BEHALF."

The notice of dishonor may be given to the party to be notified or to an agent who has authority from him to

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13. *Zollner vs. Moffitt*, 222 Pa. 644, 72 Atl. 235.

14. *Oakley vs. Carr*, 66 Nebr. 751, 92 N. W. 1000, 103 Am. S. R. 739, 60 L. R. A. 431.

15. *American Nat'l Bank vs. Fertilizer Co.*, 125 Tenn. 328, 337, 143 S. W. 597.



receive it. The words "his agent in that behalf" do not permit that notice of the dishonor of the instrument be given to a party by communicating the fact of its dishonor to some person who is a mere employe or one who is his agent in other matters unless the agent acts for him in such a capacity as will justify the person giving the notice in believing that the agent is authorized to act for his principal in the matter of the dishonored instrument. Thus, a notice to an agent who is clothed with general authority to conduct his principal's business would be proper and sufficient.<sup>16</sup>

Ordinarily the words "in that behalf" mean "for that purpose" and if the person giving notice of the dishonor of a negotiable instrument does not know and has not sufficient reason to think that the agent to whom he contemplates giving the notice has authority to act for his principal in behalf of the dishonored instrument, or if an ordinarily prudent man would have reason to doubt his authority, the notice should not be given to the agent but should be given to the principal, either personally or by mail. Notice given to an attorney or to a servant is usually insufficient unless it is shown that the attorney or servant was expressly or impliedly authorized to receive it by the person sought to be charged,<sup>17</sup> but it has been held that a notice given to an agent who has authority to indorse negotiable paper will be sufficient.<sup>18</sup> Avoid giving notice of dishonor to an agent unless satisfied that he is authorized by the party to be notified to act for him in regard to the dishonored instrument. Costly delay may ensue, and remember that although a second-

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16. *King vs. Griggs*, 82 Minn. 387, 85 N. W. 162.

17. *Amer. Natl. Bank vs. Fertilizer Co.*, 125 Tenn. 328, 143 S. W. 597.

*N. Y., etc., Contr. Co. vs. Selma Savings Bank*, 51 Ala. 305.

18. *N. Y., etc., Contr. Co. vs. Selma Savings Bnk.*, 51 Ala. 305, 306.  
*Froth vs. Thrush*, 8 Barn. & Cress. 387.



any party may actually know of the dishonor, he will be released from liability upon the instrument if that knowledge is not communicated to him within the time prescribed in this Act. (Sec. 108.)

**Notice where  
party is dead.  
"Arkansas.**

"SEC. 98. WHEN ANY PARTY IS DEAD, AND HIS DEATH IS KNOWN TO THE PARTY GIVING NOTICE, THE NOTICE MUST BE GIVEN TO A PERSONAL REPRESENTATIVE, IF THERE BE ONE, AND IF WITH REASONABLE DILIGENCE HE CAN BE FOUND. IF THERE BE NO PERSONAL REPRESENTATIVE, NOTICE MAY " BE SENT TO THE LAST RESIDENCE OR THE LAST PLACE OF BUSINESS OF THE DECEASED."

If the party who is to be notified is dead and the person giving the notice knows that he is dead, he must use reasonable diligence to find and notify the personal representative of the deceased party. Reasonable diligence has been defined to be that degree of diligence which business men usually exercise when their own interests depend upon obtaining correct information. If the party giving notice is not aware of the death of the party to be notified, a notice given in the usual manner as to a living person at his last known residence or place of business is sufficient.<sup>19</sup> What is said under Sec. 76 in regard to presentment where the party is dead to whom presentment for payment must be made applies also to giving notice of dishonor under such circumstances. If the representative of the deceased party prove to be one who is himself a party to the instrument in his individual capacity and as such entitled to notice, the notice should be given to him both as an individual and in his representative capacity, although knowledge of dishonor gained through the notice given to him in his representative capacity has been held to be the equivalent of individual notice.<sup>20</sup>

19. Goodnow vs. Warren, 122 Mass. 82.

Lindeman's Executor vs. Guildin, 34 Pa. St. 54.

20. Count vs. Thompson (Eng.), 7 C. B. 400, 62 E. C. L. 400, 137 Reprint 159.

**Notice to partners.**

“SEC. 99. WHERE THE PARTIES TO BE NOTIFIED ARE PARTNERS, NOTICE TO ANY ONE PARTNER IS NOTICE TO THE FIRM EVEN THOUGH THERE HAS BEEN A DISSOLUTION.”

Partners who are liable upon the instrument as such are not individually entitled to notice even if at the time notice is to be given the partnership has been dissolved. Notice to one partner is notice to all and to the firm.<sup>21</sup> The fact, however, that two or more persons who are parties to an instrument and entitled to notice are engaged in business as partners will not excuse notice to each if they are not liable upon the instrument as partners. Unless their liability is clearly as a firm notice of dishonor must be given to each, and if one signs as maker and the other as indorser, the latter cannot be held to his indorsement unless notice of dishonor is given to him.<sup>22</sup>

**Notice to persons jointly liable.**

“SEC. 100. NOTICE TO JOINT PARTIES WHO ARE NOT PARTNERS MUST BE GIVEN TO EACH OF THEM, UNLESS ONE OF THEM HAS AUTHORITY TO RECEIVE SUCH NOTICE FOR THE OTHERS.”

When two or more persons who are not partners are jointly liable upon the instrument, notice of its dishonor must be given to each of them unless one has authority to accept notice for the others. This is a situation which requires care in the act of giving notice of dishonor, but all difficulty will be avoided if the notice is given promptly to each of the parties without regard to whether they are jointly or severally liable upon the instrument. Joint indorsers who receive notice are not released by failure of the holder to give notice to all and may themselves give notice to those who indorsed jointly with them and thus preserve their right to contribution.<sup>23</sup> The

21. Wheeler vs. Maillott & Co., 20 La. Ann. 75.

22. Foland vs. Boyd, 23 Pa. St. 476.

23. Williams vs. Paintsville Natl. Bank, 143 Ky. 781, 137 S. W. 535, Ann. Cas. 1912 D. 350.

holder will be required, however, to look only to those to whom he gives notice. (Sec. 89.)

**Notice to  
bankrupt.**

“SEC. 101. WHERE A PARTY HAS BEEN ADJUDGED A BANKRUPT OR AN INSOLVENT, OR HAS MADE AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS, NOTICE MAY BE GIVEN EITHER TO THE PARTY HIMSELF OR TO HIS TRUSTEE OR ASSIGNEE.”

Notice to a bankrupt, or to an insolvent who has made an assignment for the benefit of his creditors, is properly given if it is either given to the bankrupt or insolvent or is given to the trustee appointed in the bankruptcy proceedings or the assignee of the insolvent, and it must be given to one or the other.

**Time within  
which notice  
must be given.**

“SEC. 102. NOTICE MAY BE GIVEN AS SOON AS THE INSTRUMENT IS DISHONORED; AND UNLESS DELAY IS EXCUSED AS HEREINAFTER PROVIDED, MUST BE GIVEN WITHIN THE TIMES FIXED BY THIS ACT.”

It is provided here that the notice may be given at once upon dishonor of the instrument, and that if it is not done immediately it must be given within the time fixed in this Act. The next two sections fix the time within which the notice must be given and in Section 113 will be found the circumstances which excuse delay in giving it.

**Where parties  
reside in same  
place.  
“Rhode Island.**

“SEC. 103. WHERE THE PERSON GIVING AND THE PERSON TO RECEIVE NOTICE RESIDE IN THE SAME PLACE, NOTICE MUST BE GIVEN WITHIN THE FOLLOWING TIMES:

1. IF GIVEN AT THE PLACE OF BUSINESS OF THE PERSON TO RECEIVE NOTICE, IT MUST BE GIVEN BEFORE THE CLOSE OF BUSINESS HOURS ON THE DAY FOLLOWING.

2. IF GIVEN AT HIS RESIDENCE, IT MUST BE GIVEN<sup>a</sup> BEFORE THE USUAL HOURS OF REST ON THE DAY FOLLOWING.

3. IF SENT BY MAIL, IT MUST BE DEPOSITED IN THE POST-OFFICE IN TIME TO REACH HIM IN USUAL COURSE ON THE DAY FOLLOWING.”

When delay is not excused by some circumstance mentioned in Section 113, the notice must be given at the

times provided in this section when the party giving and party entitled to receive the notice reside in the same place. The designation "same place" may be understood to mean the same city, or village, or the same business community outside of a city or village in which the usual business transactions between persons who reside there are conducted by personal interchange, and not commonly by the use of the mails. The term "same place" can not be described as having any definite, fixed boundaries and to avoid any question of the sufficiency of the notice it should, whenever possible, be given personally or by messenger upon the day of or the day after dishonor, or be deposited in the mail upon the day the instrument is dishonored or the next day.

If the notice is given at the residence of the party to be notified it must be given before the usual hours of rest on the day following the day of dishonor. If it is sent by mail it must be deposited in the postoffice in time to reach him before the close of business if addressed to his place of business, and if addressed to his residence it must be delivered there before the usual hours of rest on the day following the day of dishonor and it is of no importance that he was not there to receive it.<sup>24</sup> The notice may be communicated by telephone within the same time, except in Kentucky, where it is required to be in writing.

**Where parties  
reside in  
different places.**

"SEC. 104. WHERE THE PERSON GIVING AND THE PERSON TO RECEIVE NOTICE RESIDE IN DIFFERENT PLACES, THE NOTICE MUST BE GIVEN WITHIN THE FOLLOWING TIMES:

1. IF SENT BY MAIL, IT MUST BE DEPOSITED IN THE POST-OFFICE IN TIME TO GO BY MAIL THE DAY FOLLOWING THE DAY OF DISHONOR, OR IF THERE BE NO MAIL AT A CONVENIENT HOUR ON THAT DAY, BY THE NEXT MAIL THEREAFTER.

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24. Wilson vs. Peck, 121 N. Y. Supp. 344.  
Adams vs. Wright, 14 Wisc. 408.



2. IF GIVEN OTHERWISE THAN THROUGH THE POSTOFFICE, THEN WITHIN THE TIME THAT NOTICE WOULD HAVE BEEN RECEIVED IN DUE COURSE OF MAIL IF IT HAD BEEN DEPOSITED IN THE POSTOFFICE WITHIN THE TIME SPECIFIED IN THE LAST SUBDIVISION. (Sub-section 1 of this section.)”

The notice may be sent and delivered by mail by one person to another when they reside in different places, and if it is given in this manner it must then be deposited in the postoffice on or before the day following the day of dishonor in time to go by the last mail on that day. If the only mail on the day after the day of dishonor is very early or there is none at a convenient hour, which may be understood to be at or after the beginning of business on that day, the notice must be deposited in time to go by the first mail thereafter.<sup>24a</sup> The mails contemplated to be used are the mails at the place of dishonor, or at the place where a party himself receives notice of dishonor who desires to notify other parties by mail.

If the notice is given by delivery in any manner other than through the postoffice, or is given by telegraph or communicated by telephone, it must be given within the time that it would have been received if it had been sent through the mails and within the time above prescribed, and these means may be used to correct a failure to give timely notice by mail or otherwise.<sup>24b</sup> Notice of dishonor actually received by the party to be notified, but not given within the time provided in this Act, will not be valid and will not bind any party whom it is sought to hold upon the instrument. Section 108 so provides.

**When sender deemed to have given due notice.** “SEC. 105. WHERE NOTICE OF DISHONOR IS DULY ADDRESSED AND DEPOSITED IN THE POSTOFFICE, THE SENDER IS DEEMED TO HAVE GIVEN DUE NOTICE, NOTWITHSTANDING ANY MISCARRIAGE IN THE MAILS.”

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24a. Smith vs. Poillon, 87 N. Y. 590, 597.

24b. Jurgens vs. Wickman, 124 App. Div. (N. Y.), 531.



A notice properly addressed and deposited in the postoffice but unstamped or insufficiently stamped, and for that reason undelivered, would not be deemed to have been duly given, unless it was actually received within the time required in Sections 103 and 104. While an unstamped letter or one with insufficient postage may sometimes be delivered and if delivered would, of course, carry binding notice, a failure of its delivery would be due to the sender's own neglect and delay in the receipt of a notice so sent would not be excused.<sup>25</sup>

**Deposit in postoffice; what constitutes.**

“SEC. 106. NOTICE IS DEEMED TO HAVE BEEN DEPOSITED IN THE POSTOFFICE WHEN DEPOSITED IN ANY BRANCH POSTOFFICE OR IN ANY LETTER BOX UNDER THE CONTROL OF THE POSTOFFICE DEPARTMENT.”

Letter boxes supplied and placed by the postoffice department, or such as are under its control and used by the department for the collection of mail at regular intervals are contemplated by this section of the Act and not such private receptacles as are provided by persons residing upon rural free delivery routes, or private mail boxes in cities.<sup>26</sup> The notice must be deposited in a postoffice, a branch postoffice or an official letter box from which mail matter is collected by a mail carrier at regular intervals. If the notice is delivered by the sender to a mail carrier for deposit in the postoffice and he neglects to deposit it there in time, the notice, it has been held, is not deemed to have been duly given. On the other hand, it has also been held that since the U. S. postal regulations require carriers to receive prepaid letters tendered to them for mailing, a letter delivered to a mail carrier is considered to be the equivalent of its

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25. *Bank vs. Miller*, 139 Wis. 126.

26. *Wilson vs. Peek*, 121 N. Y. Supp. 344.

*Townsend vs. Auld*, 10 Misc. (N. Y.) 343.

deposit in a postoffice. The Act seems, however, to require that the notice must be placed in the postoffice, branch postoffice or letter box by the sender, and its author has stated, in the latest edition of his book, that it was not deemed wise to adopt the rule that delivery to a letter carrier is sufficient.<sup>27</sup>

**Notice by subsequent party; time of giving.** "SEC. 107. WHERE A PARTY RECEIVES NOTICE OF DISHONOR, HE HAS, AFTER THE RECEIPT OF SUCH NOTICE, THE SAME TIME FOR GIVING NOTICE TO ANTECEDENT PARTIES THAT THE HOLDER HAS AFTER THE DISHONOR."

A party who receives notice of dishonor is allowed by this section the same time for himself giving notice to parties liable upon the instrument to and before him, as the holder has under Sections 103, 104, 105 and 106, and he must observe all the requirements of those sections in giving it. For the provisions of the Act concerning the form of the notice see Section 96.

**Where notice must be sent.** "SEC. 108. WHERE A PARTY HAS ADDED AN ADDRESS TO HIS SIGNATURE, NOTICE OF DISHONOR MUST BE SENT TO THAT ADDRESS; BUT IF HE HAS NOT GIVEN SUCH ADDRESS, THEN THE NOTICE MUST BE SENT AS FOLLOWS:

1. EITHER TO THE POSTOFFICE NEAREST TO HIS PLACE OF RESIDENCE, OR TO THE POSTOFFICE WHERE HE IS ACCUSTOMED TO RECEIVE HIS LETTERS; OR,

2. IF HE LIVE IN ONE PLACE, AND HAVE HIS PLACE OF BUSINESS IN ANOTHER, NOTICE MAY BE SENT TO EITHER PLACE; OR,

3. IF HE IS SOJOURNING IN ANOTHER PLACE, NOTICE MAY BE SENT TO THE PLACE WHERE HE IS SO SOJOURNING.

BUT WHERE THE NOTICE IS ACTUALLY RECEIVED BY THE PARTY WITHIN THE TIME SPECIFIED IN THIS ACT, IT WILL BE SUFFICIENT, THOUGH NOT SENT IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION."

The place to which the notice must be sent is of the utmost importance. When the party to be notified has

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27. Crawford's Ann. Neg. Inst's Law, 4th Edn. p. 180, Note to Sec. 106.

added an address to his signature, the notice must be sent to or given at that address even though he may not be there to receive it, or it is not the address at which he usually receives his mail.<sup>28</sup> If he has given no address a reasonable effort must be made to find him, that is to say, the holder must make diligent effort to learn his place of residence or usual place of business by making inquiry among persons most likely to know it,<sup>29</sup> and if the notice is sent by mail, it must be addressed to the postoffice at the place where he lives or does business or the one nearest that place, or to the postoffice at which he usually gets his mail, if it is known. If the party lives at one town and has his usual place of business at another, each of which is a postoffice, the notice may be sent to either place.

If he is temporarily absent from his usual place of business or residence at the time the notice is to be given and the person who is to give it knows his temporary address, the notice may be addressed and sent to him at that place.<sup>30</sup> But, ordinarily, this should not be done. The notice ought to be addressed and sent to the party at his usual place of business or residence although the holder knows his temporary address and knows that the notice would be delivered at the temporary address. If a notice sent to one at the place where he is temporarily sojourning is not received by him it is good if sent in time, but it is not considered that one engaged in business who is absent from his usual place of business is ordinarily as well able to attend to the affairs of business at his place of temporary sojourn as he would be at his usual

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28. *Lankofsky vs. Raymond*, 217 Mass. 98, 104 N. E. 489.

29. *Dupont Powder Co. vs. Rooney*, 63 Misc. 344, 117 N. Y. S. 220.  
*Albany Tr. Co. vs. Frothingham*, 50 Misc. 598, 99 N. Y. S. 343.  
*Hazlett vs. Bragdon*, 7 Pa. Super. 581.

30. *Lowell Trust Co vs. Pratt*, 183 Mass. 379, 381, 67 N. E. 363.

place of business or residence, it being, besides, more reasonable to suppose that he will leave someone in town to attend to his business.<sup>31</sup>

The notice ought not, therefore, to be sent to the place where the party to be notified is sojourning unless the sender has made diligent inquiry to learn his temporary address and is sure of its prompt delivery there, or unless requested by the party to do so.

Actual notice received by the party to be charged is good and will bind him if he receives it within the time provided in this Act, although it may not have been sent in accordance with the above section, and this is so notwithstanding that the section seems to be mandatory in its specific provisions.

**Waiver of notice.** "SEC. 109. NOTICE OF DISHONOR MAY BE WAIVED, EITHER BEFORE THE TIME OF GIVING NOTICE HAS ARRIVED, OR AFTER THE OMISSION TO GIVE DUE NOTICE, AND THE WAIVER MAY BE EXPRESS OR IMPLIED."

A party who would otherwise be entitled to receive notice may waive this right at the time he becomes a party to the instrument or at any other time before, at, or after the time for giving notice has arrived. Even after the time provided in this Act for giving notice, a party may waive, although by the omission to give it he would have been discharged from liability upon the instrument. It should then appear, however, that at the time of the waiver the party waiving must have knowledge that the holder was in default,<sup>32</sup> although it makes no difference that knowing the facts, he was ignorant of the legal effect of the holder's omission to give the notice.<sup>33</sup> He may waive notice either expressly, in writing or orally, or it may be im-

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31. *Stewart vs. Eden*, 2 Caines (N. Y. C. L.) 119.

32. *Aebi vs. Bank of Evansville*, 124 Wis. 73, 81, 102 N. W. 329.

33. *Toole vs. Crafts*, 193 Mass. 110.



plied if he does or says anything which may reasonably be interpreted to mean a waiver. (See Sec. 82.)

If the person otherwise liable upon the instrument, but who claims discharge by reason of no notice, or improper or insufficient notice of non-payment, has said or done anything which ought fairly to be construed to mean a waiver of notice in favor of the person seeking to enforce the instrument against him, a waiver will be implied and he will be held to his obligation to pay the instrument. As has been said under Section 82, the acts or words from which it is sought to imply a waiver must be interpreted according to their fair meaning and the facts and circumstances of each particular case must be taken into account, but doubtful or equivocal acts or language will not imply a waiver.<sup>33a</sup>

**Who bound by  
waiver.**

“SEC. 110. WHERE THE WAIVER IS EMBODIED IN THE INSTRUMENT ITSELF, IT IS BINDING UPON ALL PARTIES; BUT WHERE IT IS WRITTEN ABOVE THE SIGNATURE OF AN INDORSER, IT BINDS HIM ONLY.”

A negotiable instrument may be so drawn that all persons who become parties are required to waive presentment for acceptance or payment and waive notice of its dishonor. When words of waiver are employed in the body of the instrument, making this a condition of its negotiation, all persons who become parties to such an instrument are bound by the waiver and none are entitled to notice. If it is not embodied in the instrument itself the waiver may be written upon the instrument by an indorser and if it is, it binds him only. It does not affect the other parties who became such either before or after him and who do not themselves waive. (See also Sections 82, 109 and 111.)

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33a. *Ross vs. Hurd*, 71 N. Y. 14.

*Turnbull vs. Maddox*, 68 Md. 579.



**Waiver of protest.**

“SEC. 111. A WAIVER OF PROTEST, WHETHER IN THE CASE OF A FOREIGN BILL OF EXCHANGE OR OTHER NEGOTIABLE INSTRUMENT, IS DEEMED TO BE A WAIVER NOT ONLY OF A FORMAL PROTEST, BUT ALSO OF PRESENTMENT AND NOTICE OF DISHONOR.”

If the words employed in the waiver are a waiver of protest, they are considered to be a waiver of presentment and notice of dishonor as well as of formal protest. Except in the case of a foreign bill of exchange, protest is not required upon dishonor of a negotiable instrument (Sec. 118), but it may be made and if the waiver is embodied in an instrument which does not require protest it is, nevertheless, deemed to be a waiver of presentment, demand and notice of dishonor as well. (Also see Secs. 82, 109, 110.)

**When notice dispensed with.**

“SEC. 112. NOTICE OF DISHONOR IS DISPENSED WITH WHEN, AFTER THE EXERCISE OF REASONABLE DILIGENCE, IT CANNOT BE GIVEN TO OR DOES NOT REACH THE PARTIES SOUGHT TO BE CHARGED.”

Notice of dishonor need not be given if, after every reasonable and diligent effort to give the notice to the party entitled thereto, it cannot be given. It is also dispensed with if the party obliged to give the notice has attempted with reasonable diligence to give it within the time and in the manner provided in this Act and the notice sent does not reach the person for whom it is intended. Reasonable diligence is, as it has been defined under Sec. 98, that degree of diligence which men of ordinary intelligence and prudence usually exercise when their own interests depend upon obtaining correct information or upon prompt, careful action.

**Delay in giving notice; how excused.**

“SEC. 113. DELAY IN GIVING NOTICE OF DISHONOR IS EXCUSED WHEN THE DELAY IS CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF THE HOLDER, AND NOT IMPUTABLE TO HIS DEFAULT, MISCONDUCT, OR NEGLIGENCE. WHEN THE CAUSE OF DELAY CEASES TO OPERATE, NOTICE MUST BE GIVEN WITH REASONABLE DILIGENCE.”

While notice must be given at the time and in the manner required in Sections 103 and 104 if it can be done, a delay caused by circumstances beyond the control of the person whose duty it is to give the notice, and not caused by his fault, his wrongful act, or due to his negligence, will excuse its omission. The notice must be given promptly and properly, however, when the circumstances which cause the delay no longer interfere or prevent it being done.

**When notice  
need not be  
given to drawer.**

“SEC. 114. NOTICE OF DISHONOR IS NOT REQUIRED TO BE GIVEN TO THE DRAWER IN EITHER OF THE FOLLOWING CASES:

1. WHERE THE DRAWER AND DRAWEE ARE THE SAME PERSON;
2. WHERE THE DRAWEE IS A FICTITIOUS PERSON OR A PERSON NOT HAVING CAPACITY TO CONTRACT;
3. WHERE THE DRAWER IS THE PERSON TO WHOM THE INSTRUMENT IS PRESENTED FOR PAYMENT;
4. WHERE THE DRAWER HAS NO RIGHT TO EXPECT OR REQUIRE THAT THE DRAWEE OR ACCEPTOR WILL HONOR THE INSTRUMENT;
5. WHERE THE DRAWER HAS COUNTERMANDED PAYMENT.”

The drawer of a bill, being a party secondarily liable upon the instrument, is entitled to notice of its dishonor, and it must be given to him in the same manner as it is required to be given in order to charge an indorser. However, when one draws the bill upon himself or it is drawn upon him by his agent or branch house (Sec. 130), he is not then entitled to notice of its dishonor, since he himself causes the dishonor by his own failure to accept or pay it, and is fully aware of it without notice. Being then primarily liable upon the instrument and having the same liability as that of the maker of a promissory note, he is not affected by a failure to give him notice. (Sec. 130.)

If he has drawn the bill upon a fictitious person, that is, as has already been explained, one who does not exist, or if existing, has no interest in the instrument and whose name is used for the purpose of deception (Sec. 9), he is not entitled to notice. Neither is he entitled to notice if he has drawn the bill upon a person who, from want of capacity to contract, cannot be made to pay the instrument if he does accept it. This seems to be so even if in the last two cases the drawer has issued the bill without knowledge of the fictitious character of the drawee or without knowledge of his want of capacity to contract.

If the drawer is the person to whom the instrument is presented for payment, though he may not be named in it as the drawee, he is not entitled to notice upon his own default in its acceptance or payment. When the drawer of a bill has no right to expect that the person upon whom it is drawn will honor it by acceptance and payment he is not then entitled to notice if the drawee fails to do either and the bill becomes dishonored.

A drawer who countermands payment, that is, who notifies the acceptor not to pay the bill, or gives a stop payment order and prevents payment of his check at bank, thereby becomes himself responsible for its dishonor and is not thereafter entitled to notice of its non-payment. If instead of giving notice of countermand he withdraws all of his funds available in the hands of the drawee for the payment of the bill, without any expectation of replacing them for the purpose of paying the instrument, this act is, in effect, a countermand and upon dishonor of the bill he is not entitled to notice.<sup>34</sup>

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34. *Valk vs. Simmons*, 28 Fed. Cas. No. 16,815, 4 Mason 113.

*Spangler vs. McDaniel*, 3 Ind. 275.

**When notice need not be given to indorser.** "SEC. 115. NOTICE OF DISHONOR IS NOT REQUIRED TO BE GIVEN TO AN INDORSER IN EITHER OF THE FOLLOWING CASES:

1. WHERE THE DRAWEE IS A FICTITIOUS PERSON OR A PERSON NOT HAVING CAPACITY TO CONTRACT, AND THE INDORSER WAS AWARE OF THE FACT AT THE TIME HE INDORSED THE INSTRUMENT;

2. WHERE THE INDORSER IS THE PERSON TO WHOM THE INSTRUMENT IS PRESENTED FOR PAYMENT;

3. WHERE THE INSTRUMENT WAS MADE OR ACCEPTED FOR HIS ACCOMMODATION."

In every case except when dispensed with by this section, and unless it has been waived, notice of dishonor must be given to the indorsers upon a negotiable instrument. The first exception covers that situation in which the indorser upon a bill of exchange knew at the time he indorsed the instrument that the person upon whom it was drawn was a fictitious person, or that it was drawn upon one who had not the power to enter into a valid and enforceable contract. (See Sec. 9.)

The second is that in which the indorser is himself the person to whom the instrument is presented for payment. Under these circumstances the indorser, being the person who refuses payment, need not be given notice of what he already knows.

The third provides that when the instrument is made or accepted for the accommodation of the indorser, notice of its dishonor need not then be given to him and it is apparent why he is not affected by lack of notice of its non-payment or non-acceptance, for he is himself liable for the payment of the debt evidenced by the instrument and ought to have provided funds to pay it. Examine Sec. 80 of the Act wherein it is provided that presentment for payment is not required in order to charge an accommodated indorser unless he has no reason to expect that the instrument will be paid if presented.



It is recommended that notice of dishonor be given to each person to be charged upon the instrument notwithstanding that the instrument may have been made or accepted for the benefit of any or all of them, even though this may sometimes appear to be an excess of precaution.

Observe that by the provisions of Sub-section 1 of this section, the indorser upon a bill of exchange drawn upon a fictitious person or one not having capacity to contract is entitled to and must be given notice of dishonor, unless he was aware of the fictitious character of the drawee or of his want of capacity to contract at the time he indorsed the instrument and that in this respect it differs from the provision of Sub-section 2 of Sec. 114 which dispenses with notice to the drawer under similar circumstances.

**Notice of non-payment where acceptance refused.**

“SEC. 116. WHERE DUE NOTICE OF DISHONOR BY NON-ACCEPTANCE HAS BEEN GIVEN, NOTICE OF A SUBSEQUENT DISHONOR BY NON-PAYMENT IS NOT NECESSARY, UNLESS IN THE MEANTIME THE INSTRUMENT HAS BEEN ACCEPTED.”

If an instrument requiring acceptance becomes dishonored and notice of its dishonor by non-acceptance has been given, no further notice need be given when the date arrives upon which the instrument ought to have been paid and it is again dishonored, this time by non-payment. The notice of dishonor by non-acceptance is sufficient to charge all parties, unless the instrument has been accepted in the meantime. If this should occur it will be necessary to give notice again upon dishonor by non-payment in order to charge its parties, even though they were properly notified of the dishonor by non-acceptance. The reason for the rule is, of course, that the drawee's refusal to accept the bill implies a refusal to pay it when due and therefore the bill need not be presented for payment, but if it is, notice of non-payment upon its further



dishonor at maturity is not required unless, in the meantime, the bill has been accepted.

**Effect of omission to give notice of non-acceptance.**  
**"Wisconsin.**

"SEC. 117. AN OMISSION TO GIVE NOTICE OF DISHONOR BY NON-ACCEPTANCE DOES NOT PREJUDICE THE RIGHTS OF A HOLDER IN DUE COURSE SUBSEQUENT TO THE OMISSION."<sup>a</sup>

A holder who acquires the instrument in due course after dishonor by non-acceptance, is not affected by an omission to give notice of the dishonor. This situation may arise when a bill requiring acceptance, for example, a bill payable at a fixed period after sight, has been presented for acceptance and refused and it is afterward negotiated into the hands of a holder in due course by the holder who failed to give notice of its dishonor. The instrument itself may not disclose the fact that it has already been dishonored before its transfer to one who became its holder subsequent to its dishonor by non-acceptance. The holder in due course who now presents the instrument for acceptance, unaware of its previous dishonor and not chargeable with any duty to know it, is not prejudiced by the failure of his transferer or any former holder to give notice of its previous dishonor. He may proceed to give notice of its refusal when dishonored upon his presentment and he can hold all of the parties who are liable upon the instrument in the same manner and to the same extent as though the bill had not previously met with dishonor, if he does so in the manner and within the time prescribed in this subdivision.

**When protest need not be made; when must be made.**

"SEC. 118. WHERE ANY NEGOTIABLE INSTRUMENT HAS BEEN DISHONORED IT MAY BE PROTESTED FOR NON-ACCEPTANCE OR NON-PAYMENT, AS THE CASE MAY BE; BUT THE PROTEST IS NOT REQUIRED EXCEPT IN THE CASE OF FOREIGN BILLS OF EXCHANGE."

Protest is not required to charge the parties to a negotiable instrument upon its dishonor except upon dishonor of a foreign bill of exchange, or before presentment for payment to the acceptor for honor or referee in case of need. (Sec. 167.) Section 129 defines a foreign bill to be any bill other than one "which is, or on its face purports to be, both drawn and payable within the same State," and it also provides that "unless the contrary appears on the face of the bill, the holder may treat it as an inland bill." Inland bills of exchange are also defined in Section 129 and are such as are, or which, upon the face purport to be, both drawn and payable within the same State.

Promissory notes and inland bills of exchange may be protested by the holder if he desires to do it and if attempted, the protest must be made as required in Sections 152 to 160 of the Act.

## SUBDIVISION VIII.

### DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Section	Section
119 Instrument; how discharged.	123 Cancellation; unintentional; burden of proof.
120 When person secondarily liable discharged.	124 Alteration of instrument; effect of.
121 Rights of party who discharges instrument.	125 What constitutes a material alteration.
122 Renunciation by holder.	

Under the provisions of the two preceding subdivisions of the Act which fix the manner and time for presentment for payment and of giving notice of dishonor, the discharge of secondary parties to a negotiable instrument is effected by the failure of the holder to perform any of the important duties which they prescribe or by his negligence in their performance. In this subdivision, however, the Act makes provision for the discharge of the instrument itself and the manner in which a secondary party will be discharged by positive acts of other parties to the instrument. Its provisions are exclusive, and a valid negotiable instrument cannot be discharged in any other different manner.<sup>1</sup>

**Instrument: how discharged.**      “SEC. 119. A NEGOTIABLE INSTRUMENT IS DISCHARGED:

<sup>a</sup>Illinois.

1. BY PAYMENT IN DUE COURSE BY OR ON BEHALF OF THE PRINCIPAL DEBTOR;

2. BY PAYMENT IN DUE COURSE BY THE PARTY ACCOMMODATED, WHERE THE INSTRUMENT IS MADE OR ACCEPTED FOR ACCOMMODATION.

3. BY THE INTENTIONAL CANCELLATION THEREOF BY THE HOLDER;

4. <sup>a</sup>BY ANY OTHER ACT WHICH WILL DISCHARGE A SIMPLE CONTRACT FOR THE PAYMENT OF MONEY;

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1. Vanderford vs. Farmers, etc., Natl. Bank, 105 Md. 164, 168, 68 A. 47, 10 L. R. A. (N. S.) 99.

5. WHEN THE PRINCIPAL DEBTOR BECOMES THE HOLDER OF THE INSTRUMENT AT OR AFTER MATURITY IN HIS OWN RIGHT."

The complete discharge of the instrument itself is effected when the obligation of the parties primarily liable upon it is performed or extinguished. This occurs as a matter of course when the principal debtor pays the instrument in full in lawful funds or some one so pays it for him in the manner described in Section 88, or when it is paid in that manner by the party, or one of several parties, for whose accommodation it is made or accepted, if it is an accommodation instrument. If anything other than money is offered and received as, for example, a renewal note, check, draft, property, or goods, it must appear that when given and received, the thing offered was intended to be in extinguishment of the note or other instrument which it was given to pay.<sup>2</sup> Discharge also occurs when any holder who holds in his own right, cancels the instrument with the intention of discharging it or when one who holds it as the agent of another intentionally cancels it by authority of his principal. The motive which prompts its cancellation is immaterial, and the instrument will be considered to be cancelled if it is intentionally marked so or is mutilated in such a manner as will indicate an intention to cancel it,<sup>3</sup> provided there is no fraud, mistake, or duress in the procurement of its cancellation.<sup>4</sup> An unintentional cancellation is not operative, however, as you will observe from Section 123.

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2. Comstock vs. Buckley, 141 Wis. 228.

Tyler vs. Hyde, 80 Ill. A. 123.

In re Utica Natl. Br. Co., 154 N. Y. 268.

3. Montgomery vs. Schwald, 177 Mo. App. 75.

4. Kester vs. Kester, 38 Oregon, 10, 62 P. 635.

Liesemer vs. Burg, 106 Mich. 124, 63 N. W. 999.

Findley vs. Cowles, 93 Iowa, 389, 61 N. W. 998.

The discharge in the manner mentioned in the fourth sub-section of this section embraces every voluntary act which would relieve the person obliged to pay money under the terms of a simple contract from the duty to do so. The act which is relied upon to discharge the instrument under this sub-section must, however, be one which is engaged in and performed between the rightful holder and the party primarily liable upon the instrument whose duty it is to pay it, and it must be of such a nature that it will relieve him of his obligation to pay the instrument to the holder.<sup>5</sup>

The instrument is also discharged when the person who by its terms is required to pay it, and who appears, therefore, to be the principal debtor, or when one for whose accommodation the instrument was made and who is, therefore, in fact the principal debtor, becomes its owner at or after its maturity. To have this effect he must have acquired it in his own right as its absolute owner, free from the rights of all other persons and not in any representative capacity.<sup>6</sup> If he becomes the owner of the instrument before maturity he may then re-negotiate it. It is so provided in Section 50.

When person  
secondarily liable  
on, discharged.

<sup>a</sup>Illinois.

<sup>b</sup>Wisconsin.

<sup>c</sup>Maryland,  
New York.

<sup>d</sup>Missouri.

“SEC. 120. A PERSON SECONDARILY LIABLE ON THE INSTRUMENT IS DISCHARGED:

1. BY ANY ACT WHICH DISCHARGES THE INSTRUMENT;

2. BY THE INTENTIONAL CANCELLATION OF HIS SIGNATURE BY THE HOLDER;

3. <sup>a</sup>BY THE DISCHARGE OF A PRIOR PARTY;<sup>d</sup>

4. BY A VALID TENDER OF PAYMENT MADE BY A PRIOR PARTY;<sup>b</sup>

5. In re Metallic Specialty Co., 210 Fed. 663.

Crawford vs. Moore, 28 Fed. 824.

6. Schwartzman vs. Post, 94 App. Div. (N. Y.) 474, 477.

Korkemas vs. Macksoud, 131 App. Div. (N. Y.) 728.



5. BY A RELEASE OF THE PRINCIPAL DEBTOR, UNLESS THE HOLDER'S RIGHT OF RECOURSE AGAINST THE PARTY SECONDARILY LIABLE IS EXPRESSLY RESERVED;<sup>a</sup>

6. BY ANY<sup>a</sup> AGREEMENT<sup>a</sup> BINDING UPON THE HOLDER TO EXTEND THE TIME OF PAYMENT, OR TO POSTPONE THE HOLDER'S RIGHT TO ENFORCE THE INSTRUMENT,<sup>c</sup> UNLESS MADE WITH THE ASSENT OF THE PARTY SECONDARILY LIABLE, OR<sup>b</sup> UNLESS<sup>a</sup> THE RIGHT OF RECOURSE AGAINST SUCH PARTY IS EXPRESSLY RESERVED."<sup>a</sup>

Parties other than those primarily liable on the instrument are discharged in the manner provided in this section and, as has already been stated, by the failure of the holder to make proper presentment and to give due notice of dishonor in strict accordance with the provisions of subdivisions 6 and 7 of this Title of the Act and the provisions to the same effect in Title 2 relating particularly to bills of exchange.

Any act whereby the instrument itself is discharged as provided in Section 119, discharges the secondary parties, as a matter of course. A secondary party is also discharged when his signature is intentionally cancelled by the holder. The valid discharge by the holder of a prior party, whether primarily or secondarily liable upon the instrument, will discharge all subsequent secondary parties. This, however, does not contemplate relief from his obligation upon the instrument obtained by a party in any other manner than by the positive act of another subsequent party to whom he is liable. Each secondary party to the instrument engages separately with each subsequent holder that he will pay the instrument if the primary party does not. His engagement is transmitted by the negotiation of the instrument to subsequent holders and his liability extends from one to another as the instrument is acquired by them. It may happen that this liability to the holder at maturity will be discharged by the latter's omission to give him notice

of the dishonor of the instrument but if he is duly notified by an intervening party to whom his liability has been transmitted, he continues to be liable to that intermediate party.<sup>7</sup> You will see, therefore, that although the liability of a secondary party may be completely discharged as to one or some other secondary parties, it is not necessarily discharged as to all. There are appropriate other sections of the Act which govern the manner by which secondary parties are discharged under particular circumstances, as by failure to make proper presentment and give notice of dishonor, and these will be found fully indexed.

A secondary party is also discharged when any prior party offers to pay the instrument and makes a good tender of payment which is refused by the holder. A valid tender of payment, therefore, operates in favor of all parties subsequent to the one making it, and if it is refused, all such parties are discharged. Such a tender is made, not by the mere expression of a willingness to pay the instrument, but by the actual offer to do so accompanied by the exact amount of money due upon it.<sup>8</sup>

When a release is granted by the holder to the principal debtor, that is, the person whose primary obligation the instrument is, secondary parties will be discharged unless the holder reserves his right of recourse against them. If he expressly reserve his right of recourse against them, however, they will not be discharged. Under these circumstances the rights of parties secondarily liable to recover against the principal debtor are, notwithstanding his release by the holder, impliedly reserved to them, and they may proceed against him upon

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7. *West River Bank vs. Taylor*, 34 N. Y. 128, 131.

8. *Holmes vs. Holmes*, 12 Barbour (N. Y.) 137.

taking up the instrument.<sup>9</sup> Therefore, whenever the holder agrees to release the principal debtor from his obligation upon the instrument, he must indorse upon it a declaration or state in the release that he reserves his right of recovery against the parties secondarily liable to him, if he intends to look to them for payment.

Secondary parties will also be discharged if the holder enters into enforceable agreement with any party by which the time of payment of the instrument is extended, unless the agreement is made with their consent or unless, at the time of making it, the holder expressly reserves his right to proceed against them in the meantime. If the secondary parties are dissatisfied, their remedy is to take up the instrument and proceed upon it against the principal debtor and prior parties.<sup>10</sup>

It must be understood that this express reservation of the right of recourse against secondary parties does not dispense with the necessity of presentment, demand, and notice of dishonor, and of protest in the case of a foreign bill of exchange, for if these are omitted when, at its maturity, the instrument is not paid, the secondary parties cease to be liable and the holder will have no right of recourse against them. (See subdivisions 6 and 7.)

**Rights of party  
who discharges  
instrument.**

“SEC. 121. WHERE THE INSTRUMENT IS PAID BY A PARTY SECONDARILY LIABLE THEREON, IT IS NOT DISCHARGED; BUT THE PARTY SO PAYING IT IS REMITTED TO HIS FORMER RIGHTS AS REGARDS ALL PRIOR PARTIES, AND HE MAY STRIKE OUT HIS OWN AND ALL SUBSEQUENT INDORSEMENTS, AND AGAIN NEGOTIATE THE INSTRUMENT, EXCEPT :

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9. Sec. Natl. Bank vs. Graham, 246 Pa. St. 256.  
Tombeekbe Bank vs. Stratton, 7 Wend. (N. Y.) 429.  
Stewart vs. Eden, 2 Cai. 121.
  10. Natl. Park Bank vs. Koehler, 204 N. Y. 174.  
Rilbe vs. Austin, 155 App. Div. (N. Y.) 207.

1. WHERE IT IS PAYABLE TO THE ORDER OF A THIRD PERSON, AND HAS BEEN PAID BY THE DRAWER; AND

2. WHERE IT WAS MADE OR ACCEPTED FOR ACCOMMODATION AND HAS BEEN PAID BY THE PARTY ACCOMMODATED.”

By any of the acts set forth in Section 119, the instrument itself becomes discharged and it cannot again be negotiated upon being discharged in the manner described in that section at or after its maturity. But when an instrument is negotiated back to a prior party, even to the principal debtor, before maturity, he may again reissue and negotiate it. (Sec. 50.) If he does, no party can be held to his signature placed upon the instrument prior to its reissue.

And now, you will observe, it is provided in this section that when a party secondarily liable takes up the instrument by payment to any holder, either before or after maturity, it is not discharged as to any party upon it except the one to whom the payment is made and those parties subsequent to the indorser who pays it, to whom he would himself be liable.<sup>11</sup> The party paying is **again** in the position which he occupied when he first negotiated the instrument and he may strike out his own signature and the signatures of all who became parties after him, and negotiate it again as by a new indorsement. The instrument remains in effect as before payment by him (Sec. 50) against all parties who placed their signatures upon it prior that of the party who pays it. This cannot be done, however, if the instrument is a bill of exchange payable to a person other than the drawer or the drawee and the drawer himself pays it, or if the instrument is paid by the party for whose accommodation it was made. When such a bill is in the hands of the drawer that fact is, of itself, notice that it

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11. *Quimby vs. Varnum*, 190 Mass. 211, 214.



has run its course and is sufficient to cause any ordinarily prudent person to make inquiry to learn whether it has not already been paid.<sup>12</sup> And when the bill is paid by the accommodated indorser it is extinguished.<sup>13</sup> For the effect of striking out indorsements and what signatures may be necessary to show holder's title, see Sec. 48.

**Renunciation by holder.**

“SEC. 122. THE HOLDER MAY EXPRESSLY RENOUNCE HIS RIGHTS AGAINST ANY PARTY TO THE INSTRUMENT, BEFORE, AT OR AFTER ITS MATURITY. AN ABSOLUTE AND UNCONDITIONAL RENUNCIATION OF HIS RIGHTS AGAINST THE PRINCIPAL DEBTOR MADE AT OR AFTER THE MATURITY OF THE INSTRUMENT DISCHARGES THE INSTRUMENT. BUT A RENUNCIATION DOES NOT AFFECT THE RIGHTS OF A HOLDER IN DUE COURSE WITHOUT NOTICE. A RENUNCIATION MUST BE IN WRITING, UNLESS THE INSTRUMENT IS DELIVERED UP TO THE PERSON PRIMARILY LIABLE THEREON.”

The holder may at any time renounce, that is, voluntarily give up, release, or abandon all of his rights under the instrument including his right to payment, without transferring them to someone else.<sup>14</sup> He usually does this without consideration but a renunciation may be made in compromise, or in exchange for something else which the holder accepts in place of the instrument and the section is applicable where the renunciation is executed for a consideration.<sup>15</sup> The renunciation must be in writing unless the instrument is delivered up to the person obliged to pay it. It must be absolute and unconditional.<sup>16</sup> If the party intending to renounce his rights delivers up the instrument before, at or after its maturity to the person primarily liable upon it with the intention of renouncing his interest in it and his rights

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12. First Natl. Bank vs. Harris, 7 Wash. 139.

13. Quimby vs. Varnum, 190 Mass. 211.

14. Pitt vs. Little, 58 Wash. 355, 108 P. 941.

15. Whitecomb vs. Natl. Exchange Bank, 123 Md. 612.

16. Leask vs. Dew, 102 App. Div. (N. Y.) 529.



to it, the instrument is completely discharged; he cannot afterward recover from any party to it. But if the renunciation is made before maturity, in writing, and the instrument is retained by the person giving it and he afterwards negotiates the instrument to a holder in due course, or if he has previously done so, this holder in due course is not bound by the renunciation and can enforce the instrument, unless he had notice of it. And if one to whom the instrument is payable but who no longer holds it, executes a renunciation, this will not affect a holder of the instrument who is a holder in due course without notice. It is obvious then, that if the person primarily liable upon an instrument desires a renunciation he must obtain it from the holder and if the instrument is not delivered to him, its absence must be satisfactorily accounted for or the renunciation may not prove to be an effective discharge. When made in favor of the principal debtor the renunciation discharges the whole instrument, but if made in favor of a secondary party it discharges only that party in whose favor it is made and those parties subsequent to him who would have a right of recourse against him if called upon to pay the instrument. (Sec. 120-3.)

**Cancellation; unintentional; burden of proof.** "SEC. 123. A CANCELLATION MADE UNINTENTIONALLY, OR UNDER A MISTAKE, OR WITHOUT AUTHORITY OF THE HOLDER, IS INOPERATIVE; BUT WHERE AN INSTRUMENT OR ANY SIGNATURE THEREON APPEARS TO HAVE BEEN CANCELLED THE BURDEN OF PROOF LIES ON THE PARTY WHO ALLEGES THAT THE CANCELLATION WAS MADE UNINTENTIONALLY, OR UNDER A MISTAKE OR WITHOUT AUTHORITY."

If the cancellation of the instrument, or of any signature upon it is made by mistake or without authority of the holder, it is not operative. It does not cancel the instrument or the signature of the party and when any signature upon the instrument or the instrument itself

appears to have been cancelled, the person seeking to enforce the instrument may show that the cancellation was made unintentionally or without authority. But he must prove this to be so by evidence sufficient to overcome any evidence offered by the opposing party in support of his claim that the cancellation was made intentionally.

Alteration of  
instrument;  
effect of.

<sup>a</sup>Illinois.

<sup>b</sup>So. Dakota.

<sup>c</sup>Wisconsin.

“SEC. 124. WHERE A NEGOTIABLE INSTRUMENT IS <sup>a</sup>MATERIALLY ALTERED<sup>b</sup> WITHOUT THE ASSENT OF ALL PARTIES LIABLE THEREON, IT IS AVOIDED, EXCEPT AS AGAINST A PARTY WHO HAS HIMSELF MADE, AUTHORIZED, OR ASSENTED<sup>c</sup> TO THE ALTERATION, AND SUBSEQUENT INDORSERS.

BUT WHEN AN INSTRUMENT HAS BEEN<sup>a</sup> MATERIALLY ALTERED<sup>b</sup> AND IS IN THE HANDS OF A HOLDER IN DUE COURSE, NOT A PARTY TO THE ALTERATION, HE MAY ENFORCE PAYMENT THEREOF ACCORDING TO ITS ORIGINAL TENOR.”

The changes and insertions which may be made in the instrument by the holder without the consent of parties are to be found in Sections 13, 14 and 48. Certain material alterations may not be made, however, after the instrument has been issued, without the consent of all parties liable upon it. What these are will appear from the next section. If any material alteration which is prohibited by that section is made without the consent of all parties the instrument will be avoided as against all except those who made, authorized or consented to the alteration and except those indorsers who, without notice, indorse the instrument after the material alteration had already been made. When any instrument which has been materially altered without the assent of parties is in the hands of a holder in due course, meaning one who took it with the qualifications prescribed by Sec. 52, and without notice of the alteration, and he is not a party to the unauthorized

material alteration, he may enforce it according to its original tenor, meaning that he may recover upon the instrument in the original amount and according to its original terms against all parties, or he may enforce it according to its altered effect against the parties who made, authorized or consented to the alteration. In this respect, this section effects a change in the law. Heretofore it has been almost universally held that an instrument which has been materially altered is thereby completely avoided and is unenforceable either in its altered effect or according to its original tenor.

Upon the general subject of alteration it may be well to explain that in determining its effect upon the instrument a controlling regard will be had to the time when the alteration was made, and whether or not the contract in the form in which it is sought to be enforced is the identical contract upon which the minds of the parties met.<sup>17</sup> In order to avoid an instrument upon the technical ground of material alteration, it is important that the instrument must have had at the time it was altered an actual, legal existence as a negotiable instrument.<sup>18</sup> The instrument obtains this effect when there has been a valid initial delivery and therefore, except under special circumstances, any alteration made before the inception of the instrument would not avoid it. Even if made after the instrument has been negotiated a change in its language or form which does not disturb its legal effect or in any way im-

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17. *Wicker vs. Jones*, 159 N. C. 102, 107, 74 S. E. 801.

*Levi vs. Arons*, 81 Misc. (N. Y.) 165.

18. *Builders Lime & Cement Co. vs. Weimer* (Iowa), 151 N. W. 100.

*Bingham vs. Reddy*, 3 Fed. Cas. No. 1414, at p. 404.

*Matson vs. Jarvis* (Tex. Civ. App.), 133 S. W. 941, 943.

*Tharp vs. Jameson*, 154 Ia. 77, 134 N. W. 583, 39 L. R. A. (N. S.) 100.

*Zander vs. Com.*, 102 Pa. 434, 439.

pair the obligations of the parties or their rights, or change their identity or the identity of the instrument, will not avoid it or discharge its parties.<sup>19</sup>

Since the next section defines what are material alterations further observations upon their effect upon the instrument will be made there.

**What constitutes a material alteration.** "SEC. 125. ANY ALTERATION WHICH CHANGES:

1. THE DATE;

2. THE SUM PAYABLE, EITHER FOR PRINCIPAL OR INTEREST;

3. THE TIME OR PLACE OF PAYMENT;

4. THE NUMBER OR THE RELATIONS OF THE PARTIES;

5. THE MEDIUM OR CURRENCY IN WHICH PAYMENT IS TO BE MADE; OR WHICH ADDS A PLACE OF PAYMENT WHERE NO PLACE OF PAYMENT IS SPECIFIED, OR ANY OTHER CHANGE OR ADDITION WHICH ALTERS THE EFFECT OF THE INSTRUMENT IN ANY RESPECT, IS A MATERIAL ALTERATION."

Any of the material alterations enumerated in this section, if made without authority of all parties to the instrument, even though they may appear to be to the advantage of the person who is to pay the instrument, will avoid it as to any party whose authority to make them has not first been obtained or who does not give assent to them after they have been made.

The sum payable may not be changed, not even lessened;<sup>20</sup> the rate of interest increased or diminished;<sup>21</sup> or the instrument made payable with interest when none was contemplated.<sup>22</sup>

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19. Pitt vs. Little, 58 Wash. 355, 108 P. 941.  
Crowe vs. Beem, 36 Ind. A. 207, 75 N. E. 302.  
Sanford vs. Cairo City Nat. Bank, 15 Ky. L. 607.  
Krouskup vs. Shontz, 51 Wis., 204, 8 N. W. 241, 37 Am. R. 817.
  20. Hewins vs. Cargill, 67 Me. 554.  
Batchelder vs. White, 80 Va. 103.
  21. N. Y. Life Ins. Co. vs. Martindale, 75 Kan. 142, 146, 88 P. 559, 121 Am. S. R. 362, 21 L. R. A. (N. S.) 1045, 12 Ann. Cas. 677.
  22. Broadway Nat. Bank vs. Hefferman, 220 Mass. 247.  
Columbia Dist. Co. vs. Reeh, 151 App. Div. (N. Y.) 128.  
Comm'l Bank vs. Maguire, 89 Minn. 394, 95 N. W. 212.



A place of payment may not be inserted without consent when the instrument is payable generally,<sup>23</sup> but if the place designated is a bank which is afterward succeeded by another that continues to occupy the premises formerly occupied by the bank designated, the substitution of the name of the successor bank would not be a material alteration.<sup>24</sup>

The time at which the instrument is payable may not be changed<sup>25</sup> and the number of its parties or their relation to each other may not be altered without the consent of all. If, after a promissory note is executed and delivered, one should add his name as maker, this, it has been held in some jurisdictions, will avoid the instrument as to those parties who do not consent to the addition of his signature. Such an alteration would destroy the identity of the instrument and has very frequently been held, before the passage of the Act, to be a material alteration both on this ground and because, in the case of a joint instrument, it confuses the evidence of the debt and affects the right of contribution between the parties.<sup>26</sup> Greater difficulty has been encountered, however, when a genuine name has been intentionally added as maker to an instrument upon which the liability of the makers is several, and the new name

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23. *Wilkes-Barre 1st Nat. Bank vs. Barnum*, 160 Fed. 245.  
*Pelton vs. San Jacinto Lbr. Co.*, 113 Cal. 21, 45 P. 12.

24. *Melton vs. Pensacola Bank*, 190 Fed. 126, 111 C. C. A. 166.

25. *Pensacola State Bank vs. Melton*, 210 Fed. 57.

26. *Baker vs. Lehman, etc., Co. (Ala.)*, 65 S. 321.

*Brown vs. Johnson*, 127 Ala. 292, 28 S. 579.

*Soaps vs. Eichberg*, 42 Ill. A. 375.

*Houck vs. Graham*, 106 Ind. 195, 6 N. E. 594.

*Browning vs. Gosnell*, 91 Ia. 448.

*Handsaker vs. Pedersen*, 71 Wash. 218.

*Wallace vs. Jewell*, 21 Ohio St. 163 (holding also that if a new party signs on the face of note, by mistake, this is not a material alteration, and that his true relation to the instrument may be shown).



has been added as additional security after the instrument has been issued and negotiated.<sup>27</sup>

But sub-section 4 of this section seems to have changed the law on this subject and one can now reach no other conclusion than that the addition of another name to the instrument as maker is a material alteration, for this sub-section expressly provides that any alteration which changes the number or the relation of the parties to the instrument is a material alteration, and will avoid the instrument and I think that the decisions abundantly support it, although there is great conflict of authority upon this question. It has even been held that if the additional name is a forgery, the instrument is avoided.<sup>28</sup>

If the instrument is payable upon named conditions these may not be changed without consent. The kind of money in which it is payable may not be changed nor may any other alteration be made, without consent, which would change the effect of the instrument in any material respect.

Under certain circumstances, as, for example, where a note has been taken in extinguishment of a debt, one who alters it in a material respect and thereby avoids it, can have no recovery on the original debt, for that was merged in the note.<sup>29</sup> This is true even if there is an entire absence of fraudulent intent in making the alteration, unless, perhaps, the alteration was made by a stranger. Where one fraudulently alters the instrument he cannot, of course, recover upon either the instrument or the consideration.<sup>30</sup>

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27. McCaughey vs. Smith, 27 N. Y. 39.

Brownell vs. Winnie, 29 N. Y. 400.

Mersman vs. Werges, 112 U. S. 139, 141.

28. Beem vs. Farrell (Iowa), 108 N. W. 1044.

29. Weston vs. Wiley, 78 Ind. 54.

30. Columbia Dist. Co. vs. Rech, 151 App. Div. (N. Y.) 128.

Harvesting Mach. Co. vs. Blair, 146 Mo. App. 374, 386.

The literal interpretation of Sections 124 and 125 must now, however, include alterations made by strangers as well as by parties to the instrument. But it had long been held to be the law in this country, prior to the enactment of this section and Section 124 of this Act, that a material alteration made by a stranger to the instrument, that is, by any person not having a beneficial interest in it, was a mere spoliation of the instrument and that the instrument could be enforced by the holder in its original form.<sup>31</sup> As to a holder in due course this is still the law, since by Section 124 a holder in due course, not a party to the alteration, may enforce the instrument according to its original tenor, no matter by whom the alteration was made. As to the original parties themselves, however, a material alteration avoids the instrument even though it was made by a stranger. This interpretation will probably find opposition and doubtless the courts will reluctantly substitute the English rule for that so universally recognized in our own decisions. These, however, upon examination, will be found to be based upon previous statutes, differing from this section, which declare that a material alteration made by a party or by some one acting with his knowledge, consent, or approval, will avoid the instrument. It appears to have been clearly intended to adopt the rule that alteration by a stranger will avoid the instrument and a material alteration by a stranger cannot now, in States where this Act is in effect, be regarded, between original parties to an instrument, as a mere spoliation. Unless this section is changed, its language will not justify any other interpretation. If the instrument has not been altered with fraudulent intent, there may always be a recovery on the original consideration.<sup>32</sup>

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31. *Kingan & Co. vs. Silvers*, 13 Ind. A. 80.

32. *Harvesting Mach. Co. vs. Blair*, 146 Mo. App. 374, 386.

Whenever the matter of intent in making a material alteration enters into its consideration at all, fraudulent intent will be presumed if the material alteration is beneficial to the person making it.<sup>33</sup> Alteration by cutting off a part of the paper on which the instrument is written, in such a manner as to change its effect, is material and will avoid it.<sup>34</sup>

The alterations contemplated in this and the preceding section are physical alterations of the instrument itself, and these sections are not to be applied to determine the effect of any agreement or understanding between or among the parties to a negotiable instrument by which its terms, or by which their liability upon it is to be changed. Do not alter the instrument in any respect without first obtaining the consent of all parties, except in the manner expressly permitted by Sections 13 and 14.

If payment has been made on an altered instrument under a mistake of fact, in ignorance of the alteration by a party who had been discharged by the alteration, he may recover it if no negligence is imputable to him.<sup>35</sup> But if the payment is made under a mistaken knowledge or impression of the legal effect of the alteration upon the rights of the party paying, he cannot then recover it, this being the rule applicable to any payment made under a mistake of law.<sup>36</sup>

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33. *Dove vs. Fansler*, 132 Mo. App. 669, 672, 112 S. W. 1009.

34. *Wicker vs. Jones*, 159 N. C. 102, 109.

35. *Sheridan vs. Carpenter*, 61 Me. 83.

36. *Taber vs. New Bedford*, 177 Mass. 197.

*Flynn vs. Howard*, 118 N. Y. 19, 22 N. E. 1109.

INTRODUCTORY.  
TO  
TITLE II.  
WITH AN OUTLINE OF THE BUSINESS FEATURE  
OF THE FEDERAL RESERVE BANK ACT.

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BILLS OF EXCHANGE.

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The provisions of the Act embraced in this second Title relate to bills of exchange. They define a bill, declare what its form shall be, how presentment for acceptance must be made, the rights of parties to bills drawn in a set, the manner of accepting and paying for honor and how protest must be made when it is required. Its provisions in regard to protest are, of course, applicable to negotiable instruments other than bills of exchange when it is to be made. The First Title of the Act, Sections 1 to 125 inclusive, applies to all negotiable instruments and its provisions are applicable alike to bills of exchange and promissory notes.

As has already been said, while the use of bills of exchange is at present comparatively less extensive in this country than in England and on the Continent it is nevertheless of great advantage to know the law applicable to the interpretation of the rights and duties of the parties to a bill. This is particularly true in view of the declared purpose of the Federal Reserve Bank Act the principal business feature of which is intended to promote their use in this country as a means of discount. These instruments are expected to become a considerable part of the resources of banks and that Act being designed to encourage their use, if it is successful in its endeavor it is expected that it will entirely transform the conditions under which



commercial paper is bought and sold, loans effected between banks, and funds transferred from one part of the country to another. It is the theory of those who have advocated this change in our banking laws that if a discount market is created in this country similar to and as wide reaching as those of the principal financial centers of Europe, with a controlling influence to be exercised by the Federal Reserve Board and Banks, in most respects like that exercised by the great central banks of England, Germany and France, the discount of commercial paper between banks will become one of the principal functions of the business banks and not a mere incident to the business of banking, as at present.

In each of the twelve Federal Reserve Cities in which Federal Reserve Banks have been established the banking activities of the district which each is to serve will be centered. These banks are to be primarily banks of re-discount, that is, they will deal only with their member banks, and they are intended to supply the varying need for money in their districts, and in the country generally, by sending to one place any abnormal supply which may be required when local facilities are inadequate to meet the local demand, and withdrawing afterward whatever surplus may exist whenever these extraordinary requirements have been met and normal business conditions again prevail. The method by which local business banks will be able to obtain funds to supply their customers needs when their own supply is inadequate is altogether by re-discount with the Federal Reserve Banks of the commercial paper in which their own funds are invested. What it is hoped to accomplish and the manner in which it is to be done are best set forth in the report of the Banking and Currency Committee which accompanied the bill and from which I quote the following:



The business section of the new banking and currency bill.

“In Section 14 (which is Section 13 in the bill as enacted) is set forth the fundamental business purpose of the bill in providing for re-discount operations. The Federal Reserve Banks are at the outset authorized to receive current deposits from their stockholders or from the Government or from other Federal Reserve Banks in so far as the latter may need to keep funds with them for exchange purposes.

“The fundamental requirement throughout all of the discount section of the proposed bill is that antecedent to the performance of a service by a Federal Reserve Bank for a member bank which applies therefor the member bank shall indorse or guarantee the obligations which it offers for discount. Subject to this requirement, the proposed bill first of all provides that notes and bills having a maturity of not over 90 days and drawn for agricultural, industrial or commercial purposes or the proceeds of which have been used for such purposes shall be admitted to re-discount. The meaning of this provision is, briefly, that any paper drawn for a legitimate business purpose of any kind may be re-discounted when within 90 days of maturity. It does not mean that the paper thus re-discounted shall have been originally made for 90 days but that it shall have at the time of being re-discounted 90 days more to run. Thus a paper drawn for 120 days originally could be re-discounted when it was 30 days old. In view of the great difficulty of defining ‘commercial paper’ the actual definition of the same has been left to the Federal Reserve Board in order that it may adjust the definition to the practices prevailing in different parts of the country in regard to the transaction of business and the making of paper. For obvious reasons it is forbidden that any such paper shall be ad-

mitted to re-discount if made for the purpose of carrying stocks or bonds. (As enacted the bill excludes notes and bonds of the United States from this prohibition.)

“It was felt that in some parts of the country the permission to re-discount paper having a maturity of 90 days might not fulfill all of the requirements imposed by the business practice of those regions, and therefore it is provided in the third paragraph of Section 14 (Section 13 in the bill as enacted) whenever the reserve of any Federal Reserve Bank is reasonably above its required minimum (such excess margin to be determined by the Federal Reserve Board), the reserve bank may re-discount commercial paper having a maturity of not more than 120 days, provided that not more than one-half of it shall have a maturity exceeding 90 days. This is intended to fulfill the requirements of portions of the country with an extremely long term of credit, but it is clear that no reserve bank should be allowed to put its funds into a form in which they will be ‘tied up’ to such an extent, unless such a bank has a reserve perfectly adequate to take care of any necessities that are likely to present themselves in the meantime.

**Its provisions in regard to acceptance by banks.**

The fourth paragraph of Section 14 (Section 13 in the bill as enacted) grants permission to reserve banks to re-discount

acceptances of member banks which are based on the exportation or importation of goods, run not more than six months, and bear the signature of one member bank in addition to that of the acceptor, the total of such re-discounts not to exceed one-half the capital of the bank for which the re-discounts are made. In the sixth paragraph, national banks are authorized to accept drafts or bills of exchange drawn upon it to an amount not exceeding one-half its capital. The acceptance business,

which it is thus proposed to authorize, is a new form of business heretofore forbidden to national banks, by reason of the provisions and interpretations of the national banking act, which have forbidden them to lend their credit or to incur contingent liabilities thereby. The acceptance form of loan is, however, very common in Europe, and has been found exceedingly serviceable. It is the opinion of expert bankers that it could be applied in the United States to excellent advantage. The following extract from a discussion of acceptances by Lawrence Merton Jacobs explains the method and purposes of the acceptance business:

“ ‘The fundamental difference between European and American banking has its origin in the dissimilarity between the evidences of indebtedness which lie behind the item of loans and discounts. It is most strikingly evidenced in the fact that time bills of exchange form a considerable proportion of the resources of the great banks of London, Paris and Berlin, whereas the assets of leading New York banks are largely based on stocks and bonds.

“ ‘**Bankers' Bills**’      “ ‘Of the bills of exchange in which are employed, either through loans or discounts, the funds of European banks, an essential part consists of what are known as bankers' bills—that is, bills drawn on bankers and accepted by them on behalf of customers in accordance with arrangement previously made. They are bills in exchange for which, by sale to a broker or by discounting at a bank, bankers' customers or those to whom they are indebted may secure immediate credit. In some instances it is arranged that the customers themselves shall draw the bills and in others that the bills shall be drawn by third parties for their account. In granting the accommodation the obligation that the

bankers take upon themselves is that they will accept the bills upon presentation. This acceptance consists in the bankers writing across the face of the drafts the word "Accepted," adding their signature and the date. It is in the nature of a certification that the bills will be paid at maturity—that is, a specified number of days or months from the date appearing in the acceptance, or three days later if grace is allowed, as in England. When a banker grants accommodation to a customer by means of an acceptance, he may secure himself in various ways. Ordinarily, a banker accepts a customer's draft merely upon his general responsibility, the banker's risk being much the same as if he had discounted the customer's note running a certain length of time. Where the customer is an importer the banker ordinarily accepts the drafts upon the delivery to him of the documents covering the shipment, which documents he then turns over to his customer against a trust receipt. When a credit of this kind is opened the usual practice is for the banker to require the signature of a form containing an agreement to hold him harmless for accepting the bills, to place him in funds sufficient to pay off the bills three days prior to their maturity, and to pay him a commission on the transaction, this commission varying according to the length of time the bills are to run and the financial standing of the customer. The cost of the accommodation to the customer is this commission plus the prevailing rate of discount for bankers' bills.

**The discount  
system in the  
United States.**

“ ‘In the United States the national-bank act does not permit banks to accept time bills drawn on them. Although the act does not specifically prohibit such acceptances, the courts have decided that national banks have no power to make them. This restriction has had a very consid-



erable influence upon the development of banking in this country. For some time after the passage of the national-bank act, merchants and manufacturers provided themselves with funds by discounting their promissory notes with their local banker. Gradually, however, many concerns finding that their needs were outstripping the banking accommodation which they could secure in their immediate vicinity, came to place their notes in the hands of brokers who in turn disposed of them to such bankers as possessed greater surplusses than they could satisfactorily invest at home. It is this method of borrowing which is now largely employed. In other words, the prohibition of bank acceptances has led to the creation of a vast amount of promissory notes instead of time bills of exchange.

**A public discount market will be created for bills based upon trade transactions.**

“ ‘The difference between these two classes of instruments accounts to a great extent for the difference between European and American banking. In the case of the time bills of exchange drawn on and accepted by prime banks and bankers there is practical uniformity of security. In the case of our promissory notes or commercial paper there is no such uniformity, the strength of the paper depending on the standing of miscellaneous mercantile and industrial concerns.

“ ‘It is this uniformity of security on the one hand which makes possible a public discount market; it is the lack of it in single-name paper which makes such a market impossible. As a result, we have great discount markets in London, Paris and Berlin and none in New York. In European centers the discount rate is the rate upon which the eyes of the financial community are fixed. In New York it is the rate for day-to-day loans on the stock exchange.’ ”



To what extent and how rapidly the new form of credit which the bill is so admittedly designed to encourage will supplant the present method by which the industries of our country supply themselves with funds will depend very largely upon the spirit in which the banks accept the proposed change. A variety of opinion exists. Some of the most prominent bankers, whose expressions upon the subject are regarded as profound authority, have expressed the belief that it will be impossible to replace, to any great extent, the firmly established method of making loans on promissory notes bearing one or more individual or firm names, maturing on time or demand and taken either directly from the individual seeking funds or purchased from note brokers whose facilities enable them to place their instruments in markets wherever a surplus of funds is known to be seeking investment. These instruments, they believe, bearing bank indorsements, will form the largest part of the re-discount operations of the Federal Reserve Banks. In the European markets the acceptances given by banks are, on the other hand, by far more predominant and these are of two principal kinds of bills: the Documentary Bill and the Commercial Credit Bill.

**The documentary bill.** The first form is that of a bill to which shipping documents are attached. If, under this form of credit, when it shall come into use here the American merchant desires to make purchases abroad he will first arrange with his bank to accept drafts for his account drawn upon his bank or its foreign representative to which shall be attached the documents covering the shipment of his purchases. The foreign merchant from whom he makes his purchases, having first been assured in some satisfactory way that his draft will be accepted, usually by being shown the bank's

agreement to accept, will find a ready sale to his local banker for the bill which he will draw for the account of his American customer. In due time his bill with invoice and document of shipment attached will be forwarded for acceptance to the American bank upon which it is drawn and upon its acceptance the shipping documents will be released to the American merchant. This bill now bearing the acceptance of the American bank, whose primary obligation it now is, is prepared to enter the discount market which is to be created here or those already established in Europe upon an equal credit footing with the acceptances of foreign banks. The effect of this transaction is that the American merchant, by the payment of a small commission, has availed himself of the credit of his bank to pay his obligation abroad, and will be expected to conclude his part of the agreement by placing the bank whose credit he has used in funds to pay the bill a few days prior to its maturity. When a bill is to be drawn by an American exporter the procedure, long established, is just the same, the bill being then drawn upon the American representative of the foreign bank, principally because few of our own banks are engaged in this kind of operations.

**The commercial credit bill.**

The second form of bank acceptances, the Commercial Credit Bill, is that bill which, to every practical purpose, is the equivalent of a loan by the bank to its customer upon his promissory note with the important difference, however, that instead of being a loan of cash it is, like the one above described, a loan of its credit by the bank to its customer. It means that the bank permits its customer to draw on it at some agreed maturity upon the understanding that the customer will supply the accepting bank with funds to pay the bill before it falls due. The bank is then not re-

quired to advance any of its own cash but merely to give its signature to an acceptance which its customer is enabled readily to discount at some other bank, or with a broker or to individuals who will, without doubt, be

**Advantages of bank acceptances.** attracted to this form of investment, and is enabled to use the cash thus realized in his business. To the customer, there is a distinct advantage in this type of credit and to the bank an equally marked gain. In those countries where this system of credit is employed the rate of interest for a cash advance is very much higher than the discount rate for acceptances and it is, as a rule, more advantageous to the customer to draw on the banker and pay the charges for acceptance and discount rather than to pay the higher interest rate for a cash advance. To the banker, having no available loanable cash, the acceptance business enables him to sell his bank's credit with profit.

**Customer's bills (trade acceptances).** Another form of bill of exchange much in use in European countries and formerly extensively employed in our own, is the time bill drawn by the merchant or manufacturer upon his customer and accepted by him. Long ago, in certain parts of this country, the use of this bill began to be discontinued as our industries gradually assumed a cash basis, obtaining the money needed to carry on their business operations by direct loans or loans obtained through note brokers, by means of their own promissory notes placed with banks having loanable funds. Drafts drawn by the merchant or manufacturer upon his customer now rarely appear here except in their limited use as instruments of value only for the purpose of collecting outstanding accounts.

Bills based on  
actual  
commercial  
transactions  
desirable as  
instruments  
available for  
re-discount.

Inasmuch as it has heretofore been the custom of banks to carry practically all of their customers' paper, it being even regarded suspiciously as a circumstance affecting their solvency if any do not, the evidences of the banks' investments in the form of promissory notes have not been available for the investment of funds of other banks except in the restricted vicinity and among the correspondents of some of the banks in the larger cities which have had the courage to undertake re-discount operations. It has been thought entirely unwise that the credit operations of banks shall be thus limited or that they must depend to such a great degree upon the facilities of note brokers for placing desirable credit instruments in markets where idle funds often await investment without any demand for them. It is, therefore, one of the main purposes of the Federal Reserve Bank Act to promote the use of bills of exchange between merchants, manufacturers and persons engaged in agricultural pursuits, and their customers, and the return of these instruments as proper and desirable items of bank discounts is expected to result as one of the important consequences of the business features of the bill. It may also be expected that the revival of their use in domestic transactions, as distinguished from bills arising out of the import and export of goods, will not, at first, meet with the hearty co-operation of the banks for the reason that our industries are now regarded as unchangeably established upon a cash basis. But those who have advocated the renewal of the former and the best use of these instruments are hopeful that the bill will meet with success in re-establishing this form of credit. They believe that offerings of these bills bearing bank indorsement will freely appear wherever



loanable money can be located and that they will even attract the surplus funds of Federal Reserve Banks whenever they shall engage in open market operations.

The concluding paragraph of the Committee report on the business feature of the bill carries the insinuation that, after the banks of this country become more familiar with the proper use of acceptances, the restriction which limits acceptances by national banks to bills growing out of export and import operations will be removed. It may be hoped, therefore, that eventually, and at no very distant date, bills drawn upon and accepted by banks for actual commercial transactions not limited to export and import operations will also appear for investment and will largely replace bills drawn by the merchant or manufacturer upon his customer.

I have given this outline of the business feature of the Banking and Currency Bill in order to illustrate the importance of a practical knowledge of the provisions of this Second Title of the Uniform Negotiable Instruments Law relating to Bills of Exchange. As has been said in the introduction to the First Title there is now, it seems to many men, a greater need than ever before that men interpreting the law, men learning the law as well as men engaged in business, shall become familiar

**Commercial  
paper as the  
basis for future  
currency issues.**

with the provisions of this Act. Our commercial paper is intended to be not only one of the principal resources of the banks of this country, as it already is,

but, by another provision of the Federal Reserve Bank Act, it is made now the partial and is ultimately to become the sole basis of the future note issues of national banks. These will, in the future, be made only by Federal Reserve Banks, and will replace the present note issues of the business banks based upon the security of



Government and in time of wider need, upon State and Municipal Bonds. In the firm belief that a currency which will automatically expand and contract with the immediate business needs of this country is to be thus provided, the Government is committed by the Act to a guaranty of its soundness. The bank notes which will be issued against a segregated deposit of selected commercial paper and bear the Government's guaranty of their redemption in gold, require as an indemnity that an equivalent amount of re-discounted commercial paper bearing the indorsement of one or more member banks shall be set aside from the assets of the Federal Reserve Bank which issues them, and that there shall also be set aside from its general funds 40 per cent of the amount of the notes in gold or lawful money. With this dignity added to the already grave importance of this class of our business obligations a better knowledge of the laws which govern our commercial paper may very properly be regarded as a duty. To that end, the provisions of this Second Title of the Uniform Negotiable Instruments Law, relating especially to the one form of commercial paper with which business men are not so familiar as with promissory notes and checks, deserve careful study and in this, I trust, the explanations will prove to be an aid.

## TITLE II.

### BILLS OF EXCHANGE.

#### SUBDIVISION I.

### FORM AND INTERPRETATION.

Section		Section	
126	A bill of exchange defined.	129	Inland and foreign bills of exchange.
127	Bill not an assignment of funds in hands of drawee.	130	When bill may be treated as promissory note.
128	Bill addressed to more than one drawee.	131	Referee in case of need.

**A bill of exchange defined.**

“SEC. 126. A BILL OF EXCHANGE IS AN UNCONDITIONAL ORDER IN WRITING ADDRESSED BY ONE PERSON TO ANOTHER, SIGNED BY THE PERSON GIVING IT, REQUIRING THE PERSON TO WHOM IT IS ADDRESSED TO PAY ON DEMAND OR AT A FIXED OR DETERMINABLE FUTURE TIME A SUM CERTAIN IN MONEY TO ORDER OR TO BEARER.”

A bill of exchange is more commonly known, in this country, as a draft and it is usually, though not necessarily, drawn by one person upon another who is indebted to him or with whom he has established a credit. There is no presumption, except in the case of a check, that a bill of exchange, used as a credit instrument, is drawn against an existing fund.<sup>1</sup> It directs the person upon whom it is drawn to pay the money due upon the drawer's account, or available to his credit, to some other person whom he names. When such an order is to be issued certain requisites of form must be observed. These are fixed in this Act (Title I, Subdivision 1) and while, as in other negotiable instruments, the exact language to

1. Morrison vs. Bailey, 5 Oh. St. 13, 18, 64 Am. D. 632.  
Champion vs. Gordon, 70 Pa. 474, 10 Am. R. 681.

be used in drawing a bill is not prescribed, the substance of the law must be complied with. (See Sec. 10.)

The bill must, of course, be in writing, signed by the person who draws it and must name the person upon whom it is drawn, and who is to pay it, with the degree of certainty required by Section 1 of Title I. It must mention the sum of money to be paid and the time when it is to be paid, with the certainty required by Sections 1 and 2. The time may be stated to be on demand, usually in a bill of exchange termed "at sight," or it may be fixed at a stated period after date, sight or demand. As a rule bills of exchange are not drawn for a longer maturity than six months and domestic bills rarely for that long. The bill may also be drawn to become payable at a given time after the happening of an event which is certain to happen or its maturity may be fixed in any of the ways mentioned in Section 1 of this Act.

A bill which is not drawn substantially in the manner described in this Act will not be regarded as a negotiable bill of exchange. (See Sec. 10.)

<b>Bill not an assignment of funds in hands drawer.</b>	<p>“SEC. 127. A BILL OF ITSELF DOES NOT OPERATE AS AN ASSIGNMENT OF THE FUNDS IN THE HANDS OF THE DRAWEE AVAILABLE FOR THE PAYMENT THEREOF, AND THE DRAWEE IS NOT LIABLE ON THE BILL UNLESS AND UNTIL HE ACCEPTS THE SAME.”</p>
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The bill of itself, even if drawn against existing funds, does not operate as an assignment of the money in the hands of the person upon whom it is drawn and who has funds of, or is indebted to the person who draws it and which are to be applied to its payment. The drawer may withdraw his funds or direct the drawee to apply them in some other way if he does so before the bill is presented and accepted. The relation of the drawee to the drawer of the bill does not change and the drawee does

not become liable upon the bill unless he accepts it. The drawee's acceptance of the instrument, however, creates an obligation from him to the holder and all other parties to the instrument, and he must then pay the money due upon the bill at its maturity. When the drawee accepts the bill he is thereupon entitled immediately to appropriate sufficient of the drawer's funds to enable him to pay it if the bill was issued against a deposit.

This section has its most frequent application in the determination of the liability of a bank to the holder of a check upon which the drawer has stopped payment. Applied in its simple sense its language leaves the bank under no uncertainty as to its position in such a situation. The bank is not liable to the holder of a check upon which payment has been stopped unless it has certified or accepted the check. Its certification is by Section 187 made the equivalent of an acceptance and after certification the check must be paid to a holder in due course. It does not then matter whether the certification was given before or after receipt of the stop-payment order, or was given by other mistake.<sup>2</sup> The payee of a check certified by mistake cannot enforce it against the certifying bank because his position has not been altered to his injury or prejudice by the mistake,<sup>3</sup> but anyone who takes it from him without notice, may recover upon it. The nature and extent of the acceptor's engagement upon acceptance or certification are explained in Section 62.

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2. Union Trust Co. vs. Preston Nat'l Bank, 136 Mich. 460, 99 N. W. 399.

— Baldinger, etc., Mfg. Co. vs. Mfrs. & Citizen's Trust Co., 156 N. Y. S. 445.

3. Baldinger, etc., Mfg. Co. vs. Mfrs. & Citizen's Trust Co., 156 N. Y. S. 445.

**Bill addressed to more than one drawer.** “SEC. 128. A BILL MAY BE ADDRESSED TO TWO OR MORE DRAWEES JOINTLY, WHETHER THEY ARE PARTNERS OR NOT; BUT NOT TO TWO “Wisconsin. OR MORE DRAWEES IN THE ALTERNATIVE” OR IN SUCCESSION.”

A bill, meaning a negotiable bill of exchange, may be drawn upon two or more persons jointly, even though they are not partners, but a negotiable bill may not be drawn upon one person or another so that the holder may or is required to present it to one or the other; and it may not be drawn upon two or more persons in a manner which requires presentment first to one and then to another in successive order.

**Inland and foreign bills of exchange.** “SEC. 129. AN INLAND BILL OF EXCHANGE IS A BILL WHICH IS, OR ON ITS FACE PURPORTS TO BE, BOTH DRAWN AND PAYABLE WITHIN THE SAME STATE. ANY OTHER BILL IS A FOREIGN BILL. UNLESS THE CONTRARY APPEARS ON THE FACE OF THE BILL, THE HOLDER MAY TREAT IT AS AN INLAND BILL.”

Any bill which appears upon its face to be drawn and payable at a place (not necessarily the same place) within the same State is called an “inland bill.” All others are foreign bills, and in these are included, of course, bills drawn in foreign countries to be payable in our own<sup>4</sup> and checks issued in one State and drawn upon a bank in another.<sup>5</sup> But if the bill is so drawn that it is not apparent upon its face, that is, if it cannot be determined from the face of the instrument alone, without the aid of anything else, that it is payable outside of the State in which it was drawn the holder may treat it as an inland bill. The distinction between inland and foreign bills is of importance upon dishonor, for it is provided in the Act that while the former may be pro-

4. *Amsineck vs. Rogers*, 189 N. Y. 252.

*Casker vs. Kuhne*, 159 App. Div. (N. Y.) 389.

5. *Mankey vs. Hoyt*, 27 S. D. 561.



tested upon dishonor the latter must be, in order to fix the liability of secondary parties. (Section 152.)

**When bill may be treated as promissory note.** "SEC. 130. WHERE IN A BILL DRAWER AND DRAWEE ARE THE SAME PERSON, OR WHERE THE DRAWER IS A FICTITIOUS PERSON,"<sup>a</sup>  
<sup>a</sup>Wisconsin. OR A PERSON NOT HAVING CAPACITY TO CONTRACT; THE HOLDER MAY TREAT THE INSTRUMENT, AT HIS OPTION, EITHER AS A BILL OF EXCHANGE OR A PROMISSORY NOTE."

The holder of the bill may treat it as a promissory note if the drawer and drawee are the same person, that is, if a partner draws on his firm,<sup>6</sup> if one makes a draft upon himself, or the bill is drawn upon him by or by him upon his agent or his branch house.<sup>7</sup> Likewise, if the person upon whom it is drawn is a fictitious person meaning, as has already been said (Sec. 9), one who does not exist, or if existing, is a person who has not and was not intended to have any interest in the instrument and whose name is used merely for the purpose of deception. If the drawee has no capacity to contract, as a person under some legal disability, for example, a person not of legal age, a person of unsound mind, one the subject of a guardianship, or an officer of a corporation who has no legal authority to bind the corporation by contract, the holder may then treat the bill as the promissory note of the drawer. When any of these conditions exist the right to treat the instrument as a promissory note or as a bill of exchange is optional with the holder. He has this option also if the instrument is so ambiguous that there is doubt whether it is a bill or a note. (See Sec. 17.) If he elects to treat it as a promissory note, the rights, duties and liabilities of the parties to the bill are like those of

6. New York, etc., Co. vs. Selma Savgs. Bk., 51 Ala. 305.

New York, etc., Co. vs. Meyer, 51 Ala. 325.

Porthouse vs. Parker. 1 Camp (Eng.) 82.

7. First Nat'l Bk. vs. Home Ins. Co., 16 N. M. 66.

Clemens vs. Staunton Co., 61 Wash. 419.

maker, indorser and payee of a note and it is governed by appropriate provisions of this Act other than those especially applicable to bills of exchange.

**of need.** “SEC. 131. THE DRAWER OF A BILL AND  
**Referee in case** ANY INDORSER MAY INSERT THEREON THE NAME OF A PERSON TO WHOM THE HOLDER MAY RESORT IN CASE OF NEED, THAT IS TO SAY, IN CASE THE BILL IS DISHONORED BY NON-ACCEPTANCE OR NON-PAYMENT. SUCH PERSON IS CALLED THE REFEREE IN CASE OF NEED. IT IS IN THE OPTION OF THE HOLDER TO RESORT TO THE REFEREE IN CASE OF NEED OR NOT, AS HE MAY SEE FIT.”

A referee in case of need is sometimes named in the bill when the drawer or indorser has doubt of the willingness or ability of the person upon whom it is drawn to either accept or pay the instrument, or both, and does not desire to have the bill meet with dishonor. He therefore refers the holder to a person other than the drawer whom he expects to accept or pay it, if the one upon whom the instrument is drawn fails or refuses to do so. Any indorser may insert the name of a referee at his indorsement or at any other place on the bill.

The reference in case of need is not usually employed unless it is of the utmost importance to the drawer or indorser that the bill shall be accepted and paid, as when it is drawn at a considerable distance, or under special circumstances and then as a rule, only when it is desirable to provide against damages and costs on re-exchange or when the circumstances seem to the drawer or indorser to warrant this precaution in order to preserve his credit. The referee in case of need usually pays the bill after protest upon its dishonor by the drawer but he may become the acceptor for honor and if he does it will be necessary to observe the requirements of subdivision 5 of this Title in order to preserve his liability. In foreign bills drawn in foreign countries the reference is indicated by the French words: “*Au besoin, chez M.——*” and the thing

to do when a bill is dishonored which contains these words is to protest it and present it to the person indicated who will very likely accept or pay it for the honor of the party who inserted the reference in the bill. If he pays the bill for honor the provisions of subdivision 6 of this Title will determine his rights and his duties, and they prescribe the manner in which the payment for honor must be made. You will observe that the holder is not required to resort to the referee in case of need but may do so if he think fit.

## SUBDIVISION II.

### ACCEPTANCE.

Section	Section
132 Acceptance, how made, etc.	137 Liability of drawee retaining or destroying bill.
133 Holder entitled to acceptance on bill.	138 Acceptance of incomplete bill.
134 Acceptance by separate instrument.	139 Kinds of acceptances.
135 Promise to accept; when equivalent to acceptance.	140 What constitutes a general acceptance.
136 Time allowed drawee to accept.	141 Qualified acceptance.
	142 Rights of parties as to qualified acceptance.

**Acceptance, how made, etc.**      “SEC. 132. THE ACCEPTANCE OF A BILL IS THE SIGNIFICATION BY THE DRAWEE OF HIS ASSENT TO THE ORDER OF THE DRAWER. THE ACCEPTANCE MUST BE IN WRITING AND SIGNED BY THE DRAWEE. IT MUST NOT EXPRESS THAT THE DRAWEE WILL PERFORM HIS PROMISE BY ANY OTHER MEANS THAN THE PAYMENT OF MONEY.”

When the person upon whom a bill is drawn which requires presentment intends to pay it (see Sec. 143 for the kind which do), he expresses his intention by “accepting” the bill when it is exhibited and presented to him. He must do this by writing appropriate words upon the bill, or upon a separate paper (Sec. 134) and he must sign it. The drawee usually writes the word “accepted” across the face of the bill, and signs his name underneath. Indeed, you will see that by the next section the holder is given the right to require the acceptance to be written on the bill. If the drawee dates his acceptance, and he must do it if a date is necessary to fix the maturity of the bill, he ought to date it as of the day when the presentment was made. (Sec. 136.) If the date is omitted and one is necessary to fix the ma-

turity of the bill, any holder may insert its true date. (Sec. 13.)

The drawee's acceptance is his promise to pay the bill when it becomes due and he is not permitted to express any other means of payment than payment in money. He may, however, state in the acceptance that the holder may have the option to require him either to pay the bill in money or do something in lieu thereof (Sec. 5), but if the acceptance attempts to put any obligation upon the holder to receive any other means of payment than money, it is no acceptance at all and the holder must treat the bill as dishonored. The acceptance becomes effective only by delivery or notification (Sec. 191) to the holder and until it is delivered it is incomplete and it may be revoked (Sec. 16), unless notice of the acceptance has been given to the holder.<sup>1</sup>

**Holder entitled to acceptance on the bill.**      "SEC. 133. THE HOLDER OF A BILL PRESENTING THE SAME FOR ACCEPTANCE MAY REQUIRE THAT THE ACCEPTANCE BE WRITTEN ON THE BILL, AND, IF SUCH REQUEST IS REFUSED, MAY TREAT THE BILL AS DISHONORED."

The person who holds the bill and presents it for acceptance has the right to require the drawee to write his acceptance upon the bill itself. If the drawee refuses to do this the holder may treat the bill as dishonored. By universal custom the proper place for the acceptance is across the face of the bill but an acceptance written anywhere on the instrument has been held to be sufficient.<sup>2</sup> Any words which will indicate the intention of the drawee to comply with the order of the drawer and

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1. First Nat'l Bk. of Murfreesboro vs. First Nat'l Bk. of Nashville, 154 S. W. (Tenn.) 965.  
Donavan vs. Flynn, 118 Mass. 537.  
First Nat'l Bk. vs. Clark, 61 Md. 400, 48 Am. R. 114.  
Ilsley vs. Jones, 12 Gray (Mass.), 260.
  2. First Nat'l Bk. vs. Trognitz, 14 Cal. A. 176, 111 P. 402.  
Brannin vs. Henderson, 12 B. Mon. (Ky.) 61.



pay the instrument at its maturity, will be regarded as an acceptance<sup>3</sup> but the simplest, best manner in which it can be done is by writing the word "accepted" on the face of the bill above the signature of the acceptor. It has even been held that the mere signature of the acceptor upon the face of the bill is sufficient.<sup>4</sup> While the section now seems to require something more than that, the signature of the drawee appearing across the face of the bill has repeatedly been held to import a full assent to the order of the drawer and that parol evidence is not admissible to prove a different intention, but when there is ambiguity parol proof is admissible to make the intention of the signer clear.<sup>5</sup> The effect of an acceptance written upon a paper other than the bill itself and of a promise to accept will appear from the next two sections.

**Acceptance by  
separate  
instrument.**

**<sup>a</sup>Illinois**

**So. Dakota.**

"SEC. 134. WHERE AN ACCEPTANCE IS WRITTEN ON A PAPER OTHER THAN THE BILL ITSELF, IT DOES NOT BIND THE ACCEPTOR EXCEPT IN FAVOR OF A PERSON<sup>a</sup> TO WHOM IT IS SHOWN AND WHO, ON THE FAITH THEREOF, RECEIVED THE BILL FOR VALUE."

You will observe from the above section that the acceptance may be made on a separate paper. If the bill is to be negotiated by the holder an acceptance upon a separate paper, as for example, by letter or telegram, is not desirable and ought not be taken if it can be avoided, although, as this section provides, and the custom of merchants sanctioned for the convenience of mercantile af-

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3. O'Donnell vs. Smith, 2 E. D. Smith (N. Y.), 124.  
Whilden vs. Merch. Nat'l Bk., 64 Ala. 1, 32, 38 Am. R. 1.
  4. Fowler vs. Gate City Nat'l Bk., 88 Ga. 29.  
Schwartz vs. Barringer, 20 La. Ann. 419.  
Wheeler vs. Webster, 1 E. D. Smith (N. Y.), 1.  
Haines vs. Nance, 52 Ill. A. 406.  
Steele vs. McKinley, 2 App. Cas. 754.
  5. Cook vs. Baldwin, 120 Mass. 317, 21 Am. R. 517.  
Murrell vs. Edwards (Tex. Civ. App.), 179 S. W. 532.

fairs, an acceptance on a separate paper may be made.<sup>6</sup> Present the bill, even if it is inconvenient to do so, and insist upon the acceptance being written across its face. A separate written acceptance will bind the acceptor in favor of any one who receives the bill for value after its acceptance in that manner, but only if the subsequent holder has been shown the separate acceptance before taking the bill and receives the bill for value in reliance upon it.<sup>7</sup>

The language of this section is explicit and excludes liability of the acceptor to persons other than those who receive the bill for value from the holder after having been shown the separate acceptance and who so receive it upon the faith of the separate acceptance. This would seem to create no liability upon the acceptor to pay the bill to the holder to whom he gives the separate acceptance, and who already had the bill before the separate acceptance was given, but this section must be interpreted in connection with Section 68 to preclude such a conclusion. There it is provided that the acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance, and this section permits a separate acceptance to be taken. Now, of course, the acceptor's engagement, when he accepts on a separate paper, is his promise to the holder who already has the bill and it must be kept. However, all dispute and delay in the enforcement of the instrument will be avoided

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6. Clark vs. Cook, 4 East (Eng.), 57, 102 Reprint, 751.  
Wells vs. W. U. Tel. Co., 144 Ia. 605, 619.  
First Nat'l Bk. vs. Comm'l Savgs. Bk., 74 Kas. 606, 87 P. 746,  
8 L. R. A. N. S. 1148, 11 Ann. Cas. 281  
First Nat'l Bk. vs. Muskogee Pipe Line Co., 40 Okl. 603, 139  
P. 1136.
  7. Eakin vs. Citizen's St. Bk., 67 Kan. 338, 72 P. 874.  
First Nat'l Bk. vs. Muskogee Pipe Line Co., 40 Okl. 603, 139  
P. 1136.  
Lehnhard vs. Sedway, 160 Mo. App. 83.

if the acceptance is obtained in the proper manner, in its proper place upon the bill, and this should be insisted upon whenever practicable.

**Promise to accept; when equivalent to acceptance.**  
**Illinois.**

VALUE."

"SEC. 135. AN UNCONDITIONAL PROMISE<sup>a</sup> IN WRITING TO ACCEPT A BILL BEFORE IT IS DRAWN IS DEEMED AN ACTUAL ACCEPTANCE IN FAVOR OF EVERY PERSON WHO, UPON THE FAITH THEREOF, RECEIVES THE BILL FOR

A promise to accept a bill is not always to be deemed an acceptance of the instrument even though it be made in writing. However, when an unconditional promise to accept is made in writing within a reasonable time before the bill is drawn, it is regarded as the equivalent of and is considered to be in effect an actual acceptance in conformity with this Act in so far as those persons are concerned who receive the bill for value upon the faith of the written promise to accept it when it shall be drawn.<sup>8</sup> In this case it is not necessary that one who receives the bill must be shown the written promise to accept as in the last preceding section. It is only required that he take the bill for value upon the strength of the promise, that is, he must have been influenced to take the bill by a knowledge of the written promise that it will be accepted when it is drawn.<sup>9</sup> In order to give to the agreement to accept the effect of a valid acceptance the

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d. Coolidge vs. Payson, 2 Wheat (U. S.), 66, 4 L. Ed. 185 (in which will be found a full review of this subject).

Morgantown Bk. vs. Hay, 143 N. C. 326, 55 S. E. 81.

Woodward vs. Griffiths-Marshall Co., 43 Minn. 260, 45 N. W. 433.

Smith vs. Ledyard, 49 Ala. 279.

James vs. E. G. Lyons Co., 134 Cal. 189, 66 P. 210.

9. Smith vs. Ledyard, 49 Ala. 279.

Woodward vs. Griffiths-Marshall Co., 43 Minn. 260, 45 N. W. 433.

Mich. Bk. vs. Ely, 17 Wend. (N. Y.) 508.

bill must be drawn in strict accordance with its terms.<sup>10</sup> But if the bill drawn does not conform to the agreement to accept, another conforming to its terms may be drawn within a reasonable time after the date of the agreement, and if it is, this will bind the drawee.<sup>11</sup>

By the Law Merchant, which governs when it is not otherwise provided in this Act (Sec. 196), authority to draw a bill implies an agreement to accept it when it is drawn, if the authority to draw is known to and relied upon by the person taking the bill.<sup>12</sup> This authority is usually granted in the form of a letter of credit which is given for the purpose of being shown to third parties by the person to whom it is issued, and it imposes upon the person who issues it a binding obligation to accept any bill drawn under its authority when drawn in accordance with its conditions. Letters of Credit are of two forms: open and special. The open letter is addressed to any one to whom it may be presented; the special letter to a specified person, requesting him to make advances or extent credit to the person described in the letter and in that case no other person is authorized to make advances or extent credit under its authority. The letter, of either character, is usually limited both as to time and amount and it is the duty of the person making advances to satisfy himself that the authority to draw has not been exceeded in either particular.

**Time allowed drawee to accept.** "SEC. 136. THE DRAWEE IS ALLOWED TWENTY-FOUR HOURS AFTER PRESENTMENT, IN WHICH TO DECIDE WHETHER OR NOT HE WILL ACCEPT THE BILL; BUT THE ACCEPTANCE, IF GIVEN, DATES AS OF THE DAY OF PRESENTATION."

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10. *Hodges vs. Iowa Barb. Steel Co.*, 80 Iowa, 65, 45 N. W. 541.  
*Brinkman vs. Hunter*, 73 Mo. 172, 39 Am. R. 492.  
*Saulsbury vs. Blandy*, 53 Ga. 665.
  11. *Johnson vs. Clark*, 39 N. Y. 216.
  12. *Coolidge vs. Payson*, 2 Wheat (U. S.), 66, 4 L. Ed. 185.  
*Ruiz vs. Renauld*, 100 N. Y. 256, 261, 3 N. E. 182.



This section must not be understood to grant twenty-four hours for the payment of a bill payable at sight or on demand, for such do not require presentment for acceptance except when drawn to be payable as is provided in Sec. 143, Sub-sec. 3, and are payable at once. But if a bill payable upon demand which requires acceptance or one payable at a fixed time is presented to the drawee for acceptance, he is allowed twenty-four hours from his first sight of the bill within which to examine the state of his accounts with the drawer and determine whether or not he will accept it. If the bill is not left with him and, availing himself of this provision, the drawee does not accept the instrument at once, the holder ought again to request its acceptance within the time he has allowed the drawee for its examination,<sup>13</sup> and if the drawee signifies his intention of accepting it and it has not been left with him, the holder will, of course, take the bill to him again. Whether the bill has or has not been left with the drawee, if he does not give the acceptance within twenty-four hours, unless a longer time has been granted, the holder must treat the bill as dishonored. (Sec. 150.)

Liability of  
drawee  
retaining or  
destroying bill.  
<sup>a</sup>Illinois.  
<sup>S.</sup>Dakota.  
<sup>b</sup>Wisconsin.

“SEC. 137.<sup>a</sup> WHERE A DRAWEE TO WHOM A BILL IS DELIVERED FOR ACCEPTANCE DESTROYS THE SAME, OR REFUSES WITHIN TWENTY-FOUR HOURS AFTER SUCH DELIVERY OR WITHIN SUCH OTHER PERIOD AS THE HOLDER MAY ALLOW, TO RETURN THE BILL ACCEPTED OR NON-ACCEPTED TO THE HOLDER HE WILL BE DEEMED TO HAVE ACCEPTED THE SAME.”<sup>b</sup>

When the holder leaves the bill with the drawee it becomes his duty to again call upon him at the end of twenty-four hours, or such further time as he may have

13. Case vs. Burt, 15 Mich. 82.

Overman vs. Hoboken City Bk., 31 N. J. L. 563, 565.

Montgomery City Bk. vs. Albany City Bk., 8 Barb. (N. Y.) 396.

Westberg vs. Chicago Lbr. Co., 117 Wis. 589, 94 N.W. 572.



granted for its consideration, and request the drawee return it, either accepted or non-accepted. If the drawee refuses to return the bill or if he destroys it he will be deemed to have accepted it and will be required to pay it. Section 150 provides that if the bill has been duly presented and is not accepted within the prescribed time, the holder must treat it as dishonored. You then see that a mere neglect unaccompanied by any signification of the drawee's intention to accept the bill is regarded as a dishonor and the holder must treat it as such. It would seem, therefore, that it would be an unwise practice accompanied by considerable risk to grant a request for further time for consideration of the bill if the request for additional time is made later than the day after the last day originally granted. Of course, a bill may be accepted by the drawee after its dishonor by non-acceptance and thus restored to credit (Sec. 138), but its subsequent acceptance will not revive the holder's right of recourse against the drawer and indorsers if he lost it by failure to give them notice of dishonor in the manner and within the time prescribed in Subdivision 7, Secs. 89 to 118, inclusive, Title I, if the drawee failed to accept within that time. His failure to do so will have effected their discharge (Sec. 50) and they cannot again be made liable upon the instrument except by their own voluntary act.<sup>13a</sup> It seems to be perfectly proper and safe, however, to grant a succession of extensions, up to the limit of a reasonable time, when each successive extension is granted before the expiration of the one that went immediately before it, and if this is done the bill need not be treated as dishonored by the drawee's fail-

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13a. *Aebi vs. Bank of Evansville*, 124 Wise. 73, 102 N. W. 329.  
*Smith vs. Rowland*, 18 Ala. 665.

ure to accept it unless it remains unaccepted at the expiration of the last extension.<sup>14</sup> (See Sec. 150.)

It seems, therefore, that the mere failure of the drawee to return the bill if it has been left with him is not, of itself, equivalent to and to be treated as an acceptance but is, on the contrary, a dishonor of the instrument.<sup>15</sup> (Sec. 150.) There must be a positive refusal to return the instrument or a destruction of it by the drawee before he is deemed to have accepted it.<sup>16</sup>

This conclusion is considered to be in accordance with the best decisions on this question and in accordance with the plain meaning of the Act, although there are authorities which hold that the drawee's mere failure to return the bill either accepted or non-accepted within the period allowed him for its consideration and examination shall be deemed to be an acceptance of the instrument;<sup>17</sup> and some of these decisions have been rendered since the adoption of the Act in States where it is in effect.

The drawee's refusal to return the instrument or his destruction of it being considered an acceptance, the instrument is not thereby dishonored and no notice need be given to the drawer or indorsers. If the instrument is a foreign bill it need not be protested as for non-acceptance. Such circumstances being unusual, however, should be communicated to all parties to the instrument immediately and upon the maturity of the bill, its payment must be demanded. If it is then refused, the usual pro-

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14. *Ingram vs. Foster*, 2 Smith K. B. (Eng.) 242.

*Westberg vs. Chicago Lumber Co.*, 117 Wis. 589, 94 N. W. 572.

15. *St. Louis & S. W. Ry. Co. vs. James*, 78 Ark. 490, 493, 95 S. W. 804, 8 Ann. Cas. 611 and note.

*Rousch vs. Duff*, 35 Mo. 312.

*Foley vs. New York Savg's Bk.*, 79 Misc. 220, 139 N. Y. S. 915.

16. *Westburg vs. Chicago Lbr. Co.*, 117 Wis. 589, 94 N. W. 572.

17. *Wisner vs. First Nat'l Bk.*, 220 Pa. 21, 68 A. 955, 17 Am S. R. 955, 17 L. R. A. N. S. 1266 and note.

ceedings upon dishonor must be taken to charge the drawer and indorsers.

**Acceptance of incomplete bill.** "SEC. 138. A BILL MAY BE ACCEPTED BEFORE IT HAS BEEN SIGNED BY THE DRAWER, OR WHILE OTHERWISE INCOMPLETE, OR WHEN IT IS OVERDUE, OR AFTER IT HAS BEEN DISHONORED BY A PREVIOUS REFUSAL TO ACCEPT, OR BY NON-PAYMENT. BUT WHEN A BILL PAYABLE AFTER SIGHT IS DISHONORED BY NON-ACCEPTANCE AND THE DRAWEE SUBSEQUENTLY ACCEPTS IT, THE HOLDER, IN THE ABSENCE OF ANY DIFFERENT AGREEMENT, IS ENTITLED TO HAVE THE BILL ACCEPTED AS OF THE DATE OF THE FIRST PRESENTMENT."

It is not necessary that the bill shall be complete and be signed by the drawer before it is accepted. The acceptor may place his acceptance upon it before it is signed by the drawer or while it is yet incomplete in any other respect. If it is overdue or has previously been refused by the drawee and dishonored by non-acceptance or by non-payment, he may nevertheless accept it and thus restore it to credit.

But if the instrument is one payable at a period after sight and therefore requires that the acceptance be dated in order to fix its maturity, and if it has been dishonored by non-acceptance and the drawee afterward accepts it, the holder may require him to date his acceptance as of the date when the bill was first presented to him. By agreement, however, between the holder and the acceptor, the acceptance may be given any other different date. Attention is called to the fact, however, that an instrument is payable on demand when it is negotiated after maturity. (Sec. 7.)

**Kinds of acceptances.** "SEC. 139. AN ACCEPTANCE IS EITHER GENERAL OR QUALIFIED. A GENERAL ACCEPTANCE ASSENTS WITHOUT QUALIFICATION TO THE ORDER OF THE DRAWER. A QUALIFIED ACCEPTANCE IN EXPRESS TERMS VARIES THE EFFECT OF THE BILL AS DRAWN."

By accepting the bill generally the acceptor agrees fully to the order of the drawer, agrees to pay the instrument in exactly the manner, terms and amount and at the time and place named by the drawer in the bill, to the person to whom the bill directs him to pay it or to the holder. By a qualified acceptance the acceptor promises to pay it subject to the terms which he himself imposes at his acceptance and such an acceptance changes the effect of the bill to the extent that the qualification imposed by the acceptor may vary the terms expressed by the drawer when he drew the bill. A qualified acceptance is in effect a new offer which in turn requires the consent of the parties already liable on the bill before it will become a binding contract.<sup>18</sup> The intention to qualify must be clear and unmistakable and the language used by the acceptor will be taken most strongly against himself.<sup>19</sup> If it does not distinctly vary the terms of the bill the acceptance will be regarded as general.<sup>20</sup> Continue now to the next section and then read these two in connection with Section 62 and what is said there upon the liability of the acceptor.

**What constitutes a general acceptance.** "SEC. 140. AN ACCEPTANCE TO PAY AT A PARTICULAR PLACE IS A GENERAL ACCEPTANCE, UNLESS IT EXPRESSLY STATES THAT THE BILL IS TO BE PAID THERE ONLY AND NOT ELSEWHERE."

A general acceptance has already been partially defined in the preceding section. This section is intended to lay down the rule that an acceptance in which the only condition named by the acceptor is that he will pay the instrument at a particular place, without expressly

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18. *Stotesburg vs. Massengale*, 13 Mo. App. 221, 226.

*Myers vs. Standart*, 11 Oh. St. 29, 37.

19. *Sylvester vs. Staples*, 44 Me. 496.

20. *Myers vs. Standart*, 11 Oh. St. 29.

*Clark vs. Gordon*, 37 S. C. L. 311, 45 Am. D. 768.

*Todd vs. State Bk.*, 3 Bush (Ky.), 626.

*City Bk. vs. Lauman*, 19 N. Y. 477.



stating that he will pay it there only, and not elsewhere, is not a qualified acceptance, but that, notwithstanding the imposition of this condition, such an acceptance is considered to be a general one. The holder is not bound to present the instrument for payment at the place named by the acceptor if he does not see fit to do so. An instrument accepted in this manner must nevertheless be presented for payment at the place of payment named in the bill itself if one is designated, but if none is designated it may be presented at the acceptor's residence or usual place of business. But, of course, as a matter of accommodation and convenience the bill ought to be presented at the place designated by the acceptor in his acceptance if the instrument does not require presentment elsewhere. But now see the next section for the effect of an acceptance which designates that the acceptor will pay at a particular place and there only.

**Qualified  
acceptance.**

**“SEC. 141. AN ACCEPTANCE IS QUALIFIED WHICH IS:**

1. **CONDITIONAL, THAT IS TO SAY, WHICH MAKES PAYMENT BY THE ACCEPTOR DEPENDENT ON THE FULFILLMENT OF A CONDITION THEREIN STATED;**
2. **PARTIAL, THAT IS TO SAY, AN ACCEPTANCE TO PAY PART ONLY OF THE AMOUNT FOR WHICH THE BILL IS DRAWN;**
3. **LOCAL, THAT IS TO SAY, AN ACCEPTANCE TO PAY ONLY AT A PARTICULAR PLACE;**
4. **QUALIFIED AS TO TIME;**
5. **THE ACCEPTANCE OF SOME ONE OR MORE OF THE DRAWEES, BUT NOT OF ALL.”**

Section 62 provides that the acceptor engages, that is, he promises and agrees to pay the bill, only in accordance with the terms of his acceptance and the holder can not require payment upon any other than the terms of his qualification if he takes such an acceptance. The next section declares that the holder may refuse to take a qualified acceptance. If he does take it he will have



to abide by its terms and the burden of proving compliance with the qualification or condition imposed by the acceptor in his acceptance rests upon the holder.<sup>21</sup>

The acceptance is qualified when the acceptor promises to pay the instrument only upon the happening or fulfillment of some condition which he names, or the happening of some independent event. This is frequently done in such bills as are accompanied by documents of shipment as, for example, when the acceptance is given to become payable only upon the actual arrival of the shipment to pay which it is drawn, or surrender of bill of lading,<sup>22</sup> or upon completion of work in progress of construction.<sup>23</sup> Another frequent use of this form of qualified acceptance is the acceptance of the bill payable "when in funds," which means that the acceptor will pay only when the person for whose account the bill is drawn shall have provided him with the money with which to do so. Such a condition is fulfilled only when the drawer puts the acceptor in possession or control of actual funds for the purpose of paying the bill.<sup>24</sup> The possession of securities, goods, or property, although of a value more than sufficient to pay the bill, does not fulfill the condition.<sup>25</sup>

If the acceptor agrees to pay only a part of the amount called for by the bill, his acceptance is qualified and he becomes liable only for the amount for which he ac-

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21. *Colorado Nat. Bk. vs. Boettcher*, 5 Colo. 185, 191, 40 Am. Rep. 142.

*Ford vs. Angelrodt*, 37 Mo. 50, 55, 88 Am. Dec. 174.

22. *Lamon vs. French*, 25 Wis. 37, 40.

23. *Hogan vs. Globe Mut. Bldg. Assn.*, 140 Cal. 610, 74 P. 153.  
*Burns Lbr. Co. vs. Doyle*, 71 Conn. 742, 43 A. 483, 71 Am. S. R. 235.

*Cook vs. Wolfendale*, 105 Mass. 401.

24. *Wallace vs. Douglas*, 116 N. C. 659, 21 S. E. 387.

25. *Campbell vs. Pettengill*, 7 Me. 126, 129, 20 Am. D. 349.  
*Carlisle vs. Hooks*, 58 Tex. 420.

cepted.<sup>26</sup> The drawee's acceptance is also qualified when he engages to pay the instrument only at a particular place in a city which he names and that place is not the place named in the bill, or if he states in it that he will pay it only at a particular time which is not the time named in the bill, or he intentionally restricts or modifies the time of payment named in the bill in any way. An acceptance is also qualified if it is made by one or more of the drawees but not by all who, by the terms of the instrument, are required to accept it, unless the one accepting has authority to accept for all. (Sec. 145.)

If the acceptor attempts to qualify his acceptance by promising performance by any other means than by the payment of money it does not amount to even a qualified acceptance and the instrument must be treated as dishonored. (Sec. 132.) But if his acceptance, in addition to promising payment in money as required in the bill, gives the holder the option to require something to be done in lieu thereof, it is not qualified. (Secs. 5 and 132.)

**Rights of parties as to qualified acceptance.** "SEC. 142. THE HOLDER MAY REFUSE TO TAKE A QUALIFIED ACCEPTANCE, AND IF HE DOES NOT OBTAIN AN UNQUALIFIED ACCEPTANCE, HE MAY TREAT THE BILL AS DISHONORED BY NON-ACCEPTANCE. WHERE A QUALIFIED ACCEPTANCE IS TAKEN, THE DRAWER AND INDORSERS ARE DISCHARGED FROM LIABILITY ON THE BILL, UNLESS THEY HAVE EXPRESSLY OR IMPLIEDLY AUTHORIZED THE HOLDER TO TAKE A QUALIFIED ACCEPTANCE, OR SUBSEQUENTLY ASSENT THERETO. WHEN THE DRAWER OR AN INDORSER RECEIVES NOTICE OF A QUALIFIED ACCEPTANCE, HE MUST, WITHIN A REASONABLE TIME, EXPRESS HIS DISSENT TO THE HOLDER, OR HE WILL BE DEEMED TO HAVE ASSENTED THERETO."

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26. Ray vs. Faulkner, 73 Ill. 469.

27. Fanshawe vs. Peet, 2 H. & N. 1, 4 E. R. C. 243.

Myers vs. Standart, 11 Oh. St. 29.

Niagara Dist. Bk. vs. Fairman Mach. Tool Co., 31 Barb. 403.

When a qualified acceptance is made or offered the holder may refuse to take it. He is entitled to have a general acceptance and if he does not obtain it he imperils his right of recourse upon the drawer and indorsers of the bill. If he suffers loss by reason of having taken a qualified acceptance he cannot recover from the parties secondarily liable upon the instrument unless, before he takes it, he obtains authority from each of them to do so, or, having taken it and notified them, they assent to it. Their assent as well as their authority may be either expressly given or it may be implied from their words or conduct in regard to the matter. (See Sec. 82 for explanation of the express waiver and of waiver by implication.)

Upon receiving notice that a qualified acceptance is offered by the drawee, or has been taken, the drawer and indorsers must, within a reasonable time, express their dissent, that is, their refusal to consent that the holder may take it, and anyone who does not express dissent is considered to have assented thereto. What is considered a reasonable time must be determined from Section 193. That section provides that the particular facts and circumstances of each case and the customs of a particular place and business must be taken into consideration.

In general a qualified acceptance should be refused by the holder and the instrument proceeded upon as upon dishonor unless the acceptance offered fully protects the rights of all parties to the bill. It has already been seen that an instrument once dishonored by non-acceptance or even by non-payment may afterward be accepted and restored to credit. (Sec. 138.) By giving notice of dishonor to the drawer and all indorsers, the holder will preserve his rights pending an unqualified, general acceptance, or until such time as the drawer and indorsers

shall expressly authorize him to take the qualified acceptance offered by the drawee; but, of course, the holder must use sound judgment in such a matter as this and not hand over the bill for dishonor and protest unless his own interests and the rights of other parties require it.

## SUBDIVISION III.

## PRESENTMENT FOR ACCEPTANCE.

## Section

## Section

143 When presentment for acceptance must be made.

144 When failure to present releases drawer and indorser.

145 Presentment; how made.

146 On what days presentment may be made.

147 Presentment when time is insufficient.

148 When presentment is excused.

149 When dishonored by non-acceptance.

150 Duty of holder where bill not accepted.

151 Rights of holder where bill not accepted.

**When**

**presentment for acceptance must be made.**

“SEC. 143. PRESENTMENT FOR ACCEPTANCE MUST BE MADE:

1. WHERE THE BILL IS PAYABLE AFTER SIGHT, OR IN ANY OTHER CASE, WHERE PRESENTMENT FOR ACCEPTANCE IS NECESSARY IN ORDER TO FIX THE MATURITY OF THE INSTRUMENT; OR,

2. WHERE THE BILL EXPRESSLY STIPULATES THAT IT SHALL BE PRESENTED FOR ACCEPTANCE; OR,

3. WHERE THE BILL IS DRAWN PAYABLE ELSEWHERE THAN AT THE RESIDENCE OR PLACE OF BUSINESS OF THE DRAWEE.

IN NO OTHER CASE IS PRESENTMENT FOR ACCEPTANCE NECESSARY IN ORDER TO RENDER ANY PARTY TO THE BILL LIABLE.”

Presentment for acceptance must not be confused with presentment for payment, the provisions applicable to which are to be found in Sections 76 to 89 of Title I.

Presentment for payment is always required in order to charge the drawer and indorsers on the instrument, except as it is otherwise provided in this Act, while the instrument need not be presented for acceptance unless this section expressly requires that it shall be done. This section of the Act designates when presentment for acceptance must be made, and in no other case is it necessary.



Whether the instrument is an inland or a foreign bill, if it is payable at a fixed period after sight or demand, or if it is subject to any condition requiring acceptance in order to fix its maturity, it must be presented for acceptance. It must be presented, of course, if it expressly provides that it shall be.

The third sub-section which requires presentment when the bill is payable elsewhere than at the drawee's residence or usual place of business effects a change in the law in some States. It has been held that a bill of **exchange payable upon a day certain or at sight, or on demand after date**, need not be presented for acceptance even though the place of payment which it names is not the drawee's usual place of business or residence; that presentment for payment alone is necessary to charge the drawer and indorsers upon such a bill. Sub-section 3 nullifies all these decisions and a bill of exchange payable at a designated certain time, or at sight, or on demand after its date at any place other than the residence or usual place of business of the drawee, must first be presented to the drawee for acceptance before being presented to him for payment. If it is not presented for acceptance the drawer and all indorsers will be discharged. It is no longer sufficient or proper to await the maturity of a bill so drawn and present it for payment. It must be first presented for acceptance.

Since a bill may be presented for payment at the residence or usual place of business of the drawee if it specifies no other place of payment (Sec. 73), such an instrument need not be presented for acceptance because of the provision of Sub-section 3, but if its presentment for acceptance is required for some other reason it must be made. If such a bill is presented for acceptance on the day of its maturity and acceptance is refused it

need not again be presented for payment,<sup>1</sup> but in such a case the delay to make presentment must be satisfactorily accounted for. (See next section and Sec. 147.)

It must not be understood from the provisions of this section that instruments which do not require acceptances may not be presented. On the contrary, it is usual and best if the bill is intended for further negotiation, to present it for acceptance even when it is payable at a certain future day, for it cannot otherwise be known whether or not the instrument will be paid, nor can the drawee's liability upon the instrument be fixed in any other way.<sup>2</sup>

**When failure to present releases drawer and indorser.**

“SEC. 144. EXCEPT AS HEREIN OTHERWISE PROVIDED, THE HOLDER OF A BILL WHICH IS REQUIRED BY THE NEXT PRECEDING SECTION TO BE PRESENTED FOR ACCEPTANCE MUST EITHER PRESENT IT FOR ACCEPTANCE OR NEGOTIATE IT WITHIN A REASONABLE TIME. IF HE FAIL TO DO SO, THE DRAWER AND ALL INDORSERS ARE DISCHARGED.”

So long as a bill which requires presentment continues to be negotiated it need not be presented for acceptance, but its negotiation may not be delayed for an unreasonable length of time. The holder to whom such an instrument is transferred may pass it on in the usual course of business by indorsement or delivery, according to the character of the bill, and it may thus circulate from one person to another for an indefinite length of time, if payable on demand, or until the day of its maturity if payable at a fixed time, but it must not stop too long in its course without further negotiation. One who does not intend to negotiate the instrument further should at once present it to the drawee for acceptance

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1. *Plate vs. Reynolds*, 27 N. Y. 586.

2. *Nat'l Park Bk. vs. Saitta*, 127 App. Div. (N. Y.) 624, 628, 111 N. Y. S. 927, 89 N. E. 1106.

and if the instrument is in the hands of an agent, for collection, he is required to do so.<sup>3</sup>

What is an unreasonable delay will be determined in accordance with Section 193. In this connection Section 71 and what is there said is referred to and should be read. The custom of merchants and banks differs in regard to presentment of notes and of bills and what would be considered a reasonable delay as to the first, might be and, in their present use, probably would be regarded unreasonable as to the other. Drafts or bills as they are now used in this country, contemplate more prompt negotiation and presentment both for acceptance and payment than do promissory notes and it would be entirely unsafe to delay presentment of a bill for acceptance for the same length of time for which one might safely delay the presentment of a note for payment. Either negotiate the bill within a short time after its receipt or present it to the drawee for his acceptance. No rule of delay can be given, for the facts of each particular case and the custom of each community or business are to be regarded. (Sec. 193.) The failure of the holder to present the bill for acceptance or to negotiate it within a reasonable time will release the drawer and all indorsers who became parties prior to that one who is chargeable with the delay, no matter where his position may be in the chain of title, or at what time in the negotiation of the bill the unreasonable delay occurs, and their release will relieve them of all liability to him and to the endorsers subsequent to him. (See Secs. 7, 53, 71.)

Of course, you have observed the provision in Sec. 127, by which the drawee does not become liable upon the bill unless and until he accepts it. A bill, therefore, which

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3. *Allen vs. Suydam*, 17 Wend. 368, see note in 34 Am. Dec. 310.

continues to be negotiated without acceptance remains merely an order upon the drawee to pay the sum it mentions, but does not become his obligation to pay until it obtains his acceptance.

**Presentment;**      “SEC. 145. PRESENTMENT FOR ACCEPT-  
**how made.**      ANCE MUST BE MADE BY OR ON BEHALF OF  
THE HOLDER AT A REASONABLE HOUR, ON A BUSINESS DAY AND  
BEFORE THE BILL IS OVERDUE, TO THE DRAWEE OR SOME PER-  
SON AUTHORIZED TO ACCEPT OR REFUSE ACCEPTANCE ON HIS  
BEHALF; AND:

1. WHERE A BILL IS ADDRESSED TO TWO OR MORE DRAWEES WHO ARE NOT PARTNERS, PRESENTMENT MUST BE MADE TO THEM ALL, UNLESS ONE HAS AUTHORITY TO ACCEPT OR REFUSE ACCEPTANCE FOR ALL, IN WHICH CASE PRESENTMENT MAY BE MADE TO HIM ONLY;

2. WHERE THE DRAWEE IS DEAD, PRESENTMENT MAY BE MADE TO HIS PERSONAL REPRESENTATIVE;

3. WHERE THE DRAWEE HAS BEEN ADJUDGED A BANKRUPT OR AN INSOLVENT OR HAS MADE AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS, PRESENTMENT MAY BE MADE TO HIM OR TO HIS TRUSTEE OR ASSIGNEE.”

The manner of making the presentment is prescribed in this section. When presentment for acceptance is required it must be made before the instrument is overdue, by the holder or some one acting for him, and it must be made to the person named in the bill as the drawee or to some one to whom he has given authority to accept or refuse the bill in his behalf. If an acceptance is taken from or the presentment is made to any person other than the drawee, it is the holder's duty to satisfy himself that the person who accepts on behalf of the drawee is authorized to so do or, if no acceptance is obtained, to satisfy himself that the person who refuses the bill is likewise acting by the drawee's authority,<sup>4</sup> and the holder may require the agent to show the

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4. *Wiseman vs. Chiapella*, 23 How. (U. S.) 368, 16 L. Ed. 466.  
*Sharp vs. Drew*, 9 Ind. 281.  
*Schuchardt vs. Hale*, 36 Md. 5901, 11 Am. R. 514.



nature and extent of the authority he claims to have. This authority may have been expressly given or it may be implied from the relations between the drawee and the person who acts for him. The principles of the law of agency from which it can be determined whether the person accepting or refusing to accept the instrument on behalf of his principal are discussed at Section 19, Title I. The presentment must be made at a reasonable hour on a business day. In this connection, read Sections 72 and 85 and what is there said in regard to presentment for payment. The requirements of those two sections and of this one are alike and it will not be necessary to repeat the explanations here.

The provisions of Sub-sections 1 and 3 of this section are similar to those in regard to giving notice of dishonor when the bill is addressed to two or more drawees who are not partners, or when the drawee, or one of the drawees, is a bankrupt or an insolvent. If one of several drawees or one of a firm accepts the instrument, he will be bound by his acceptance.<sup>5</sup> Presentment should then be made or attempted in the manner explained in the treatment of the provisions of the Act in regard to giving notice of dishonor under similar circumstances. (See Secs. 100 and 101.)

If the drawee is dead, presentment for acceptance to his personal representative need not be attempted. It is excused and the bill may be treated as dishonored by non-acceptance (Sec. 148), but the holder may waive this provision in his favor and present the bill to the personal representative of the deceased drawee if he desires to do so. If the bill is not addressed to anybody but is payable at a designated place, its acceptance by anyone

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5. *Smith vs. Melton*, 133 Mass. 369, 371.



at that place will be deemed to be an admission that he was intended as the drawee. (Sec. 1, Sub-section 5.)

The Act does not attempt to designate the place where presentment for acceptance must be made. Where a place of payment is designated in the instrument presentment there is regarded as sufficient if the residence or place of business of the drawee is unknown to the holder and cannot be ascertained with reasonable diligence; but where the drawee's residence or place of business is known, or can be ascertained with reasonable diligence, it is required that the presentment be made to him at either the one place or the other.<sup>5a</sup> And remember that when a bill is payable elsewhere than at the residence or usual place of business of the drawee it must be presented for acceptance to the drawee at his residence or place of business or wherever he may be found before it is presented for payment at the place where it is payable. (Sec. 143.)

**On what days  
presentment may  
be made.**

**"Colorado,  
Kentucky,  
Wisconsin,  
Arizona.**

“SEC. 146. A BILL MAY BE PRESENTED FOR ACCEPTANCE ON ANY DAY ON WHICH NEGOTIABLE INSTRUMENTS MAY BE PRESENTED FOR PAYMENT UNDER THE PROVISIONS OF SECTIONS SEVENTY-TWO (72) AND EIGHTY-FIVE (85) OF THIS ACT. “WHEN SATURDAY IS NOT OTHERWISE A HOLIDAY, PRESENTMENT FOR ACCEPTANCE MAY BE MADE BEFORE TWELVE O’CLOCK, NOON, ON THAT DAY.”

In connection with this section read what has already been said in explanation of Sections 72 and 85. Those two sections are expressly made applicable to this one. While under Section 85 presentment for payment of a bill falling due on Saturday should not be made until the next business day, a bill may be presented for acceptance upon that day if the presentment is made before twelve o’clock, noon.

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<sup>5a</sup>. *Mason vs. Dousay*, 35 Ill. 424, 85 Am. Dec. 368.

**Presentment  
when time is  
insufficient.**

“SEC. 147. WHERE THE HOLDER OF A

BILL DRAWN PAYABLE ELSEWHERE THAN AT  
THE PLACE OF BUSINESS OR THE RESIDENCE

OF THE DRAWEE HAS NOT TIME WITH THE EXERCISE OF REASONABLE DILIGENCE TO PRESENT THE BILL FOR ACCEPTANCE BEFORE PRESENTING IT FOR PAYMENT ON THE DAY THAT IT FALLS DUE, THE DELAY CAUSED BY PRESENTING THE BILL FOR ACCEPTANCE BEFORE PRESENTING IT FOR PAYMENT IS EXCUSED, AND DOES NOT DISCHARGE THE DRAWER AND INDORSERS.”

When a time bill which requires presentment for acceptance by reason of Sub-section 3 of Section 143, because it is payable at a place other than the residence or usual place of business of the drawee, comes into the possession of the holder too late to permit its presentment for acceptance before presenting it for payment at the place where payment must be demanded on the day that it falls due, any necessary delay caused by first presenting it for acceptance is excused. The holder of a bill drawn in that manner is required to present it for acceptance to the drawee at his residence or his place of business or wherever he can be found, and if he has used reasonable diligence in attempting to do so and yet is not able to present it for payment at the place of payment on the day when it becomes due, the delay caused by presenting the bill for acceptance will excuse the delay in presenting it for payment. The drawer and indorsers will not be discharged by the failure of the holder to present the instrument for payment upon the day of its maturity if the delay is caused by the time consumed in the endeavor to first present the bill for acceptance. The holder must, however, present the bill for payment at the place where it is drawn to be payable as soon as possible, the delay, not presentment for payment, being excused.

**When  
presentment is  
excused.**

“SEC. 148. PRESENTMENT FOR ACCEPTANCE IS EXCUSED, AND A BILL MAY BE TREATED AS DISHONORED BY NON-ACCEPT-

ANCE, IN EITHER OF THE FOLLOWING CASES:

1. WHERE THE DRAWEE IS DEAD, OR HAS ABSCONDED, OR IS FICTITIOUS PERSON OR A PERSON NOT HAVING CAPACITY TO CONTRACT BY BILL;

2. WHERE, AFTER THE EXERCISE OF REASONABLE DILIGENCE, PRESENTMENT CANNOT BE MADE;

3. WHERE, ALTHOUGH PRESENTMENT HAS BEEN IRREGULAR, ACCEPTANCE HAS BEEN REFUSED ON SOME OTHER GROUND.”

Presentment for acceptance need not be made or attempted if the drawee is dead, or if he has absconded, that is, if he has departed secretly or is in hiding to escape paying his debts or to escape arrest, and the bill need not be presented if the drawee is a fictitious person. The term, “fictitious person” is used here as elsewhere in this Act in its very broadest sense. It means a non-existing person, or if an existing person, one who is not a party to and who is not interested in the instrument in connection with which his name is used by some other person but whose name is employed for the purpose of deception.<sup>6</sup> (Sec. 9.)

Presentment for acceptance is also excused if the drawee is a person who has not the power to contract by bill, that is, one who has not the capacity to enter into an acceptance to which he can be held in law, as an infant, or person under other legal disability. And if, after attempting presentment with reasonable diligence, that is, after making such efforts to present the bill as an ordinarily prudent and careful person would make under the same or similar circumstances,<sup>7</sup> the holder can not do so, its presentment is then also excused.

If the presentment has been made in an improper manner and the bill is refused by the drawee, but his refusal is stated to be upon some other ground, and not by rea-

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6. Phillips vs. Mercantile Nat'l Bk., 140 N. Y. 556, 35 N. E. 982, 37 A. S. R. 596.

7. Sulsbacker vs. Bank of Charleston, 86 Tenn. 201.

son of the improper presentment, its proper presentment for acceptance is, under these circumstances, excused. When presentment for acceptance is excused the drawer and indorsers of the bill are not discharged by the failure of the holder to present it.

**When dishonored by non-acceptance.** “SEC. 149. A BILL IS DISHONORED BY NON-ACCEPTANCE:

1. WHEN IT IS DULY PRESENTED FOR ACCEPTANCE, AND SUCH AN ACCEPTANCE AS IS PRESCRIBED BY THIS ACT IS REFUSED OR CANNOT BE OBTAINED; OR,

2. WHEN PRESENTMENT FOR ACCEPTANCE IS EXCUSED, AND THE BILL IS NOT ACCEPTED.”

The bill becomes dishonored by non-acceptance when it is presented and the kind of acceptance that is either required or permitted under this Act is refused or cannot be obtained, or when its presentment is excused by the preceding section and the bill is not accepted by the drawee. As upon a dishonor by the refusal of the drawee to accept the bill notice must then be given in accordance with the provisions of Sections 89 to 118 of Title I, Sub-division 8, and it must be given to all parties whose liability the holder desires to fix.

**Duty of holder where bill not accepted.** “SEC. 150. WHERE A BILL IS DULY PRESENTED FOR ACCEPTANCE AND IS NOT ACCEPTED WITHIN THE PRESCRIBED TIME, THE PERSON PRESENTING IT MUST TREAT THE BILL AS DISHONORED BY NON-ACCEPTANCE OR HE LOSES THE RIGHT OF RECOURSE AGAINST THE DRAWER AND INDORSERS.”

When the holder has presented the bill for acceptance and it is not accepted by the drawee within the time provided in Sec. 136 and in the manner provided in Sec. 137 he must treat it as dishonored by non-acceptance. If he does not at once proceed upon its dishonor and give notice of dishonor to the drawer and all indorsers whom he desires to hold in the manner provided in Sections 89 to 118 inclusive, he will lose his right of recovery against



them. If the bill appears upon its face to be a foreign bill (see Sec. 129 for definition) it must be protested. (Sec. 152.) The provisions of the Act in regard to protest will be found in the next Sub-division.

**Rights of holder where bill not accepted.**      "SEC. 151. WHEN A BILL IS DISHONORED BY NON-ACCEPTANCE, AN IMMEDIATE RIGHT OF RECOURSE AGAINST THE DRAWER AND INDORSERS ACCRUES TO THE HOLDER AND NO PRESENTMENT FOR PAYMENT IS NECESSARY."

The holder of a bill which has become dishonored by non-acceptance is not required to proceed against the person upon whom it is drawn to enforce and collect it, and he is not required to present it for payment after its dishonor by non-acceptance, unless, with his consent, it is subsequently accepted. He has the right to at once proceed against the drawer and indorsers and they must pay the bill regardless of the solvency of the drawee and his ability to pay. As upon a promissory note which has become dishonored by non-payment, the indorsers upon the bill are each liable to the holder and each is liable to all parties to the instrument subsequent to himself who may take it up and pay it. The drawer is, of course, liable to all. Their liability among themselves is determined by Section 68, Title I. Sub-division 5.



## SUBDIVISION IV.

## PROTEST.

Section		Section	
152	In what cases necessary.	158	Protest before maturity (for better security).
153	How made.	159	When protest dispensed with.
154	By whom made.	160	Protest where bill is lost.
155	When to be made.		
156	Where made.		
157	Protest both for non-acceptance and non-payment.		

In its strict technical sense the term protest, when used in reference to commercial paper, means only the formal declaration of dishonor drawn up and signed by the person making the protest. In its broader, more popular sense and as used among banks and men in business, it includes all of the steps necessary to charge the parties secondarily liable upon the instrument protested as well as the formal declaration of dishonor called protest, and if the protest is to be exclusively relied upon to prove the liability of the parties to be charged upon dishonor it must show that a demand was made and that all the necessary steps were taken to fix their liability.<sup>1</sup> These steps are the presentment for acceptance or payment at maturity and the usual proceedings upon dishonor, and the provisions of this Act by which these are governed will be found in Sections 70 to 118, inclusive. The protesting officer must be familiar with these as well as the provisions of Subdivision 3 of this Title upon the subject of presentment for acceptance.

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1. *Peoples Bank vs. Brooke*, 31 Md. 7.  
*Mason vs. Kilcourse*, 71 N. J. Law 472.

**In what cases  
protest  
necessary.**

“SEC. 152. WHERE A FOREIGN BILL APPEARING ON ITS FACE TO BE SUCH IS DISHONORED BY NON-ACCEPTANCE IT MUST BE DULY PROTESTED FOR NON-ACCEPTANCE, AND WHERE SUCH A BILL, WHICH HAS NOT PREVIOUSLY BEEN DISHONORED BY NON-ACCEPTANCE IS DISHONORED BY NON-PAYMENT IT MUST BE DULY PROTESTED FOR NON-PAYMENT. IF IT IS NOT SO PROTESTED, THE DRAWER AND INDORSERS ARE DISCHARGED. WHERE A BILL DOES NOT APPEAR ON ITS FACE TO BE A FOREIGN BILL, PROTEST THEREOF IN CASE OF DISHONOR IS UNNECESSARY.”

While promissory notes and inland bills of exchange may be protested, protest is not necessary in order to charge any party upon them except in the case of an inland bill of exchange when it contains a reference in case of need and the holder desires to resort to the referee for acceptance (Sec. 167), or if the instrument is a bill which has been accepted for honor *supra* protest. (Sec. 167.) Upon the dishonor of a foreign bill of exchange, that is, a bill, including a check, which originated outside and is payable within the United States,<sup>2</sup> and, as defined in Sec. 129, one which is not or does not from its face appear to be both drawn and payable in the same State, protest is necessary and it is equally necessary whether the dishonor is by non-acceptance or non-payment. The section referred to also provides that “unless the contrary appears on the face of the bill the holder may treat it as an inland bill.” A bill, then, which by Sec. 129 may be treated as an inland bill, although it is actually drawn in one State and payable in another does not require protest. If the holder neglects to make protest of a bill which requires it he will lose all right of recourse upon the drawer and indorsers. They are discharged. Protest for non-acceptance and for non-payment are made in the same manner and differ only in the statement of the cause for protest.

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2. *Mankey vs. Hoyt*, 27 S. D. 561, 132 N. W. 230.

**Protest: how made.**

“SEC. 153. THE PROTEST MUST BE ANNEXED TO THE BILL, OR MUST CONTAIN A COPY THEREOF, AND MUST BE UNDER THE HAND AND SEAL OF THE NOTARY MAKING IT, AND MUST SPECIFY,

1. THE TIME AND PLACE OF PRESENTMENT;
2. THE FACT THAT PRESENTMENT WAS MADE, AND THE MANNER THEREOF;
3. THE CAUSE OR REASON FOR PROTESTING THE BILL;
4. THE DEMAND MADE, AND THE ANSWER GIVEN, IF ANY, OR THE FACT THAT THE DRAWEE OR ACCEPTOR COULD NOT BE FOUND.”

The protest is a writing by the person making it, signed by him, containing a copy of the instrument protested, or to which the instrument itself is attached, and a statement that the instrument was presented to the person obliged to pay or accept it, and that its payment or acceptance was refused. The protest must specify the time and place of presentment and recite that the instrument was presented to the drawee or acceptor or to some other person authorized by him to accept, pay, or refuse it, and that payment or acceptance was demanded, as the case may be, and was refused. If no person was found at the place of presentment and protest, or no one was found upon whom proper demand could be made, the protest must so state. If anyone was found upon whom demand was made, the writing must state what demand was made and what answer, if any, was given, and if any reason was given for the refusal to pay or accept the instrument by the person of whom the demand was made, that reason must be stated in the protest. If the protest is made by a Notary Public he must sign it in his official capacity and attach his notarial seal. If it is made by a person other than a Notary a seal is not required, although it is usual to attest the solemnity of the act of protest by making upon the paper, at his signature, a scroll seal, this being a circle

or bracket made with the pen within which the word "seal" is written. If the instrument which is to be protested is lost, or the person entitled to hold it cannot obtain it or has no copy, it is provided in Sec. 155 that the protest shall contain written particulars thereof. What are written particulars will be explained under that section.

**Protest: by whom made.** "SEC. 154. PROTEST MAY BE MADE BY:

1. A NOTARY PUBLIC; OR

2. BY ANY RESPECTABLE RESIDENT OF THE PLACE WHERE THE BILL IS DISHONORED, IN THE PRESENCE OF TWO OR MORE CREDIBLE WITNESSES."

The protest may be and usually is made by a Notary Public but it need not necessarily be made by a Notary. Any respectable resident of the place where the bill is dishonored may make the protest. A resident is a person who has his place of residence, that is, one who lives at the place where the instrument is dishonored, and a respectable resident is one who is in good standing in the community in which he lives and who enjoys the respect of his neighbors and associates. The protest is a personal act and cannot be made by one person in another's name, unless this is permitted by statute or firmly established and sanctioned by the custom of a particular place.<sup>3</sup> If protest is made by a resident, he must make it and sign it in the presence of two credible witnesses or acknowledge to them that he did so. Credible witnesses are such persons whose testimony would be accepted or whose statement of any fact would be believed by other persons in the community in which they live, and who are generally known to be truthful persons. It is not necessary that they accompany the person making protest when he presents the instrument

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3. *Commercial Bank vs. Varnum*, 49 N. Y. 269, 275.  
*Ocean Nat'l Bk. vs. Williams*, 102 Mass. 141.



to the drawee and makes demand, their presence being required only at the execution and signing of the protest by the person making it, and they must attest the protest as witnesses. One who cannot write his name may sign by mark.

While it is best that the protest be made by a disinterested person the Act does not require it and expressly provides that any person possessing the qualifications which it prescribes may make it. It is not usual that anyone who is a party to the instrument shall make the protest but if it is done, and the protesting officer possesses the qualifications of this section, it would not appear to be invalid for that reason<sup>4</sup> unless made so by other statute.

There is always considerable uncertainty and confusion, though there need not be, about the right of an officer of a bank to legally protest paper belonging to his bank or in which his bank is interested. In the absence of some prohibitive statute or regulation in the banking laws there is no legal objection to the protest being made by a notary who is also a bank officer,<sup>5</sup> even if he is a stockholder in the bank,<sup>6</sup> and it has been held that an officer of a bank who is a notary may protest his own note.<sup>7</sup> But the practice is not recommended.

The protest is never made until after the instrument has been dishonored except when it is protested for better security under Section 158. The person making the protest must take the instrument, if it has not been lost, destroyed or wrongfully detained, to the party who is to

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4. *Dykman vs. Northbridge*, 1 App. Div. 26, 28, 36 N. Y. S. 962.

5. *Nelson vs. First Nat'l Bk.*, 69 Fed. 798, 29 U. S. App. 554.

6. *Moreland's Assignee vs. Citizen's Svcs. Bk.*, 97 Ky. 211.

*Patton vs. Bk. of Lafayette*, 124 Ga. 965, 53 S. E. 664, 4 Ann. Cas. 639, 5 L. R. A. N. S. 592.

7. *Dykman vs. Northbridge*, 1 App. Div. (N. Y.) 26, 36 N. Y. S. 962.

pay or accept it, at the place where it is to be paid or accepted, even if it has already been presented by the holder and payment or acceptance has been refused. Such refusal does not dispense with the formality of presentment and demand by the protesting officer at the place where protest is to be made, except as it is provided in Section 156.

**Protest: when to be made.** “SEC. 155. WHEN A BILL IS PROTESTED, SUCH PROTEST MUST BE MADE ON THE DAY OF ITS DISHONOR, UNLESS DELAY IS EXCUSED AS HEREIN PROVIDED. WHEN A BILL HAS BEEN DULY NOTED, THE PROTEST MAY BE SUBSEQUENTLY EXTENDED AS OF THE DAY OF THE NOTING.”

The officer must protest the instrument upon the very day of its dishonor unless delay is excused by reason of the provisions of Section 159. When the cause of the delay no longer prevents it being done, the protest must be made with reasonable diligence. The same degree of diligence is required as is necessary in presenting an instrument for payment (see Sec. 81) or in giving notice of dishonor. (Sec. 113.)

The protest usually proceeds in two steps. After presenting the instrument, which has already been dishonored, making demand and after failure to obtain payment, or acceptance, as the case may be, the person protesting the instrument must declare that he does protest the instrument and must write upon it, and in his register, a memorandum of that fact, the reasons for the protest, the month, date and year when it was done, the demand made and the answer given, and such other information as he may think necessary to enable him afterward to make out the formal protest, and sign this memorandum upon the instrument either by name or by his initials. This is called “noting” and it is done to serve as a truthful reminder which will enable the person

making the protest to later make out his formal certificate. Upon this being done the protest may be made at any subsequent date, even after action has been begun on the instrument, and it may be done as of the date of the noting. This is "extending the protest." When the protest is extended the protesting officer will issue to the holder a certificate of protest. This certificate is described in Section 153. Notice of dishonor must, of course, be given upon dishonor of the instrument in the manner and at the time required by Sections 89 to 118, inclusive, and if the notice is given by the protesting officer the protest usually recites that such notice was given and to whom. It is customary, too, that it describe the manner of giving the notice although it is not necessary that the certificate recite that notice was given or state what notice was given, how, or to whom,<sup>8</sup> unless, as I have already stated, and now repeat for emphasis, the protest is relied upon exclusively as proof that a demand was made and all necessary steps taken in order to fix the liability of the secondary parties.<sup>9</sup> Persons who make protest of negotiable instruments must make themselves familiar with the provisions of Sub-division VII, Title I, of the Act, which governs the manner of giving notice of dishonor.

**Protest: where made.** "SEC. 156. A BILL MUST BE PROTESTED

AT THE PLACE WHERE IT IS DISHONORED, EXCEPT THAT WHEN A BILL DRAWN PAYABLE AT THE PLACE OF BUSINESS, OR RESIDENCE OF SOME PERSON OTHER THAN THE DRAWEE, HAS BEEN DISHONORED BY NON-ACCEPTANCE, IT MUST BE PROTESTED FOR NON-PAYMENT AT THE PLACE WHERE IT IS EXPRESSED TO BE PAYABLE, AND NO FURTHER PRESENTMENT FOR PAYMENT TO, OR DEMAND ON, THE DRAWEE IS NECESSARY."

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8. Martin vs. Brown, 75 Ala. 442.

9. Peoples Bank vs. Brooke, 31 Md. 7.

Mason vs. Kilcourse, 71 N. J. Law, 472.

Demand or sight bills, or a bill payable at a fixed period after sight, or one payable at a designated maturity are often made payable at a place other than the residence or usual place of business of the drawee and these require presentment for acceptance before being presented for payment. (Sec. 143, Sub-sec. 3.) "Place" as used in this section may be understood to mean any place in the same city, town or business community other than that at which the drawer lives or where he conducts his business and it may mean another city, town or business community other than that one in which he lives or does business. When a bill is so drawn it requires presentment for acceptance before being presented for payment, in order that the drawee may have an opportunity to examine the instrument and the state of his accounts with the drawer. If such an instrument is a foreign bill and is dishonored by non-acceptance it would seem that it is necessary to protest it upon its dishonor by non-acceptance (Sec. 152), but the protest must be made at the place where the instrument is expressed to be payable. No further demand need be made upon the drawee, whose duty it seems then to be, since he has been apprised of the presence of the instrument by its presentment to him for acceptance, to provide funds with which to pay it at the place where it is payable if he intends to do so.<sup>10</sup>

<b>Protest both for non-acceptance and non-payment.</b>	<p style="text-align: center;">"SEC. 157. A BILL WHICH HAS BEEN PROTESTED FOR NON-ACCEPTANCE MAY BE SUBSEQUENTLY PROTESTED FOR NON-PAYMENT."</p>
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While protest upon dishonor of the instrument by non-payment after it has already been protested upon non-acceptance, need not be made, except when required by

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10. Mitchell vs. Baring, 10 Barn & C. 4.  
Mason vs. Franklin, 3 Johns (N. Y.), 202.



the preceding section, it may be done if desired, and if in the meantime the instrument (a foreign bill) has been accepted, it must be done.

If notice of its dishonor by non-acceptance has already been given, notice of its subsequent dishonor by non-payment is not required (Sec. 116) and no further protest need be made in order to charge drawer and indorsers unless the instrument requiring protest has, in the meantime, been accepted or unless, as is provided in the preceding section, the bill has been dishonored by non-acceptance at the drawee's place of business or residence, or elsewhere, and it is payable at the place of business or residence of some person other than the drawee.

**Protest before maturity where acceptor is insolvent.**

“SEC. 158. WHERE THE ACCEPTOR HAS BEEN ADJUDGED A BANKRUPT OR AN INSOLVENT, OR HAS MADE AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS, BEFORE THE BILL MATURES, THE HOLDER MAY CAUSE THE BILL TO BE PROTESTED FOR BETTER SECURITY AGAINST THE DRAWER AND INDORSERS.”

When a bill has been accepted and afterward, before its maturity, the acceptor becomes insolvent or a bankrupt or if he has made an assignment for the benefit of his creditors and the holder has reason to fear that the bill will not be paid at maturity, he may protest it for better security.

This protest does not hasten the maturity of the bill or dispense with its protest at maturity if protest is then required by the nature of the instrument. Its ordinary effect is to bring about an acceptance for honor and it usually prepares the way for such an acceptance. The manner in which such an acceptance is to be made and the formalities which attend it are prescribed and described in Sections 161 and 170. This protest does not give the holder an immediate right of recourse against

drawer and indorsers as upon dishonor and he cannot sue them upon the bill before its maturity.

**When protest dispensed with.** "SEC. 159. PROTEST IS DISPENSED WITH BY ANY CIRCUMSTANCES WHICH WOULD DISPENSE WITH NOTICE OF DISHONOR. DELAY IN NOTING OR PROTESTING IS EXCUSED WHEN DELAY IS CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF THE HOLDER AND NOT IMPUTABLE TO HIS DEFAULT, MISCONDUCT OR NEGLIGENCE. WHEN THE CAUSE OF DELAY CEASES TO OPERATE, THE BILL MUST BE NOTED OR PROTESTED WITH REASONABLE DILIGENCE."

The circumstances which dispense with the necessity of giving notice of dishonor will be found in Sections 109 to 118, inclusive, Title I. Protest may also be dispensed with by waiver. (Sec. 111.) The provision in this section regarding delay in noting or protesting is the same as in Section 113, by which delay is excused in giving notice of the dishonor of the instrument by non-payment. After the cause of the delay has been removed, the noting must be done or the protest made promptly.

**Protest where bill is lost.** "SEC. 160. WHERE A BILL IS LOST OR DESTROYED OR IS WRONGLY DETAINED FROM THE PERSON ENTITLED TO HOLD IT, PROTEST MAY BE MADE ON A COPY OR WRITTEN PARTICULARS THEREOF."

If the instrument which is to be protested is lost or destroyed or if it is wrongfully detained from the person who is entitled to hold it at the time when protest must be made, the protest may be made upon a copy of the bill if one can be obtained. If a copy cannot be procured a written description of the instrument must be drawn up, with particulars showing its date, amount, when and to whom payable, the names of the drawer and indorsers, or of all whose names can be obtained, and all endeavor used to be correct and exact which the particular circumstances will permit. This may be substituted for the instrument to be protested if the instrument itself cannot be produced by reason of its loss,

destruction or wrongful detention from the holder and **the protest must** then be made as though the instrument were actually in the possession of the holder.<sup>11</sup> The holder must himself be without fault in his failure to produce the instrument and if its detention is not wrongful, its production is not excused. If he has himself deliberately and intentionally destroyed the bill he cannot protest on written particulars. His intentional destruction of the instrument will be deemed a cancellation and the instrument discharged. (Sec. 119.)

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11. Hinsdale vs. Miles, 5 Conn. 331.

## SUBDIVISION V.

## ACCEPTANCE FOR HONOR.

Section		Section	
161	When bill may be accepted for honor.	166	Maturity of bill payable after sight accepted for honor.
162	Acceptance for honor; how made.	167	Protest of bill accepted for honor, etc.
163	When deemed to be an acceptance for honor of drawer.	168	Presentment for payment to acceptor for honor; how made.
164	Liability of acceptor for honor.	169	When delay in making presentment is excused.
165	Engagement of acceptor for honor.	170	Dishonor by acceptor for honor.

**When bill may be accepted for honor.** "SEC. 161. WHERE A BILL OF EXCHANGE HAS BEEN PROTESTED FOR DISHONOR BY NON-ACCEPTANCE OR PROTESTED FOR BETTER SECURITY, AND IS NOT OVERDUE, ANY PERSON NOT BEING A PARTY ALREADY LIABLE THEREON MAY, WITH THE CONSENT OF THE HOLDER, INTERVENE AND ACCEPT THE BILL *supra* PROTEST FOR THE HONOR OF ANY PARTY LIABLE THEREON, OR FOR THE HONOR OF THE PERSON FOR WHOSE ACCOUNT THE BILL IS DRAWN. THE ACCEPTANCE FOR HONOR MAY BE FOR PART ONLY OF THE SUM FOR WHICH THE BILL IS DRAWN; AND WHERE THERE HAS BEEN AN ACCEPTANCE FOR HONOR FOR ONE PARTY, THERE MAY BE A FURTHER ACCEPTANCE BY A DIFFERENT PERSON FOR THE HONOR OF ANOTHER PARTY."

When the drawee has refused to accept the bill as drawn, any person not already a party liable upon it may intervene and, with the consent of the holder, may at any time before maturity accept it for honor after it has been protested for non-acceptance or if, after acceptance by the drawee, the bill is protested before maturity for better security. This acceptance is called an acceptance "*Supra* protest" for the reason that it can be made only after the bill has been protested. It is an acceptance by a person, a stranger,



or the drawee, if he is not already a party liable upon the instrument, made in order to save the credit and the honor of the drawer or any other party who is liable upon the bill, or of that one for whose account it has been drawn. The drawee, then, if he is unwilling to accept the bill generally and is not bound in good faith to do so, may accept it for honor and if he does, his acceptance will take the distinctive character of this peculiar and very unusual kind.<sup>1</sup> The acceptance for honor may be made only with the consent of the holder and if the holder permits the bill to be accepted for honor he has then the right to enforce it against the acceptor for honor as well as all other parties, if it is not paid at maturity. He must, however, properly present the bill to the drawee at maturity and protest it again if the drawee persists in his determination to allow the bill to go to dishonor and it is not then paid. The holder cannot otherwise require the acceptor for honor to pay the bill. (Sec. 167.)

When an acceptance for honor is obtained by the holder by reason of its protest before maturity for better security, he is obliged to await maturity of the bill before he can enforce his right of recourse against the acceptor for honor and those parties to the instrument for whose honor it was accepted, this form of acceptance creating a conditional obligation to pay the bill only if the drawee does not pay it at maturity.<sup>2</sup>

The acceptance for honor may be for all or a part of the sum for which the bill is drawn and there may be more than one such acceptance for one or more than one party.

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1. *Schimmelpenninck vs. Bayard*, 1 Pet. (U. S.) 264, 7 L. Ed. 138. *Swope vs. Ross*, 40 Pa. 186, 80 Am. D. 567.  
See note 92 Am. Dec. 579, 7 L. R. A. 209 Note.
  2. *Walton vs. Williams*, 44 Ala. 347.  
*Baring vs. Clark*, 19 Pick (Mass.) 220.

While there is no provision in the Act which seems to require it, it is the duty of the acceptor for honor to immediately give notice of the fact of his acceptance to the party for whose honor he accepts the bill. If he fails to do so the omission, in so far as it can be determined from the Act, does not seem to affect injuriously his right to recover upon the bill if he is required to pay it at maturity. But it has been considered essential to his right of recovery if he pays the bill that he give immediate notice of his intervention, for the reason that the rights of other parties to the bill are thereby suspended and may be injuriously affected by it.<sup>3</sup> When an acceptance for honor is made for the honor of one party other acceptances may be subsequently made for the honor of other parties liable upon the bill, but it seems there cannot be a series of acceptances of separate parts of the sum for the honor of the same party.<sup>4</sup> If any acceptor for honor is required to pay the bill his rights are as fixed by Sections 175 and 177.

**Acceptances for honor: how made.** "SEC. 162. AN ACCEPTANCE FOR HONOR *supra* PROTEST MUST BE IN WRITING, AND INDICATE THAT IT IS AN ACCEPTANCE FOR HONOR, AND MUST BE SIGNED BY THE ACCEPTOR FOR HONOR."

Such an acceptance must be in writing. It is usually made upon the bill and the words generally employed are "Accepted *Supra* Protest" or "Accepted for the honor of . . . . .," or in their abbreviated form "Accepted S. P." If the acceptance does not expressly state that it is an acceptance for honor its language must indicate that it is and any of the above forms do that sufficiently. It must be signed by the acceptor for honor. By the law of agency any one can do by another that

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3. Wood vs. Pugh, 7 Ohio (Pt. 2) 156.  
Story on Bills, Sec. 259.

4. Jackson vs. Hudson, 2 Camp. (Eng.) 447.

which he can himself do and an acceptance for honor by any person which is made and signed by his agent, duly authorized for that purpose, is valid and enforceable.

**When deemed to be an acceptance for honor of the drawer.** "SEC. 163. WHERE AN ACCEPTANCE FOR HONOR DOES NOT EXPRESSLY STATE FOR WHOSE HONOR IT IS MADE, IT IS DEEMED TO BE AN ACCEPTANCE FOR THE HONOR OF THE DRAWER."

If the acceptor for honor does not expressly state in his acceptance for whose honor he accepts the bill his acceptance is deemed to be for the honor of the drawer, and in the absence of words positively and clearly stating that the acceptance for honor was made for the honor of some other party to the bill this cannot be shown even if it be a fact, upon the familiar doctrine that a written contract cannot be varied by parol proof. It is therefore most important that the acceptor for honor state clearly for whose honor he accepts the instrument, for his liability is affected thereby as will appear from the next section, and if his acceptance is deemed to be for the honor of the drawer he will have no right of recourse against the indorsers after payment, for none of these are liable to the drawer.<sup>5</sup>

**Liability of the acceptor for honor.** "SEC. 164. THE ACCEPTOR FOR HONOR IS LIABLE TO THE HOLDER AND TO ALL PARTIES TO THE BILL SUBSEQUENT TO THE PARTY FOR WHOSE HONOR HE HAS ACCEPTED."

One who accepts in this manner is liable to the holder of the bill to whom he gives the acceptance, of course, and he is liable to all parties after that party for whose honor he accepts it. It is apparent, therefore, that if he does not state for whose honor he accepts the bill, his liability extends to all parties subsequent to the drawer.

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5. *Gazzam vs. Armstrong*, 3 Dana (Ky.) 554, 557.

**Engagement of acceptor for honor.** "SEC. 165. THE ACCEPTOR FOR HONOR, BY SUCH ACCEPTANCE ENGAGES THAT HE WILL, ON DUE PRESENTMENT, PAY THE BILL ACCORDING TO THE TERMS OF HIS ACCEPTANCE, PROVIDED IT SHALL NOT HAVE BEEN PAID BY THE DRAWEE, AND PROVIDED ALSO, THAT IT SHALL HAVE BEEN DULY PRESENTED FOR PAYMENT AND PROTESTED FOR NON-PAYMENT AND NOTICE OF DISHONOR GIVEN TO HIM."

His acceptance like any other is in the nature of an agreement that he will pay the bill. While he is a voluntary party to the instrument and may himself have no interest in the bill or its proceeds, he is bound by his agreement and must pay, but only after the holder has duly presented the bill to the drawee and demanded payment and thereupon duly protests it for non-payment if the drawee does not then pay it.<sup>6</sup> Ordinarily when a bill has been dishonored and protested for non-acceptance and due notice given the drawer and indorsers they are not discharged by failure to protest it again for non-payment, or by a failure to give notice of dishonor by non-payment. But in this respect the liability of an acceptor for honor and his rights differ from theirs. He will be discharged if the holder fails to protest the bill upon dishonor by non-payment and to give him due notice of the dishonor, although protest had already been made prior to his acceptance for honor and notice of the dishonor of the bill by non-acceptance had already been given.

**Maturity of bill payable after sight, accepted for honor.** "SEC. 166. WHERE A BILL PAYABLE AFTER SIGHT IS ACCEPTED FOR HONOR, ITS MATURITY IS CALCULATED FROM THE DATE OF THE NOTING FOR NON-ACCEPTANCE AND NOT FROM THE DATE OF THE ACCEPTANCE FOR HONOR."

A bill payable after sight requires presentment for acceptance to fix its maturity. (Sec. 143.) When such

6. Schofield vs. Bayard, 3 Wend. (N. Y.) 488.

Lenox vs. Leverett, 10 Mass. 1, 6 Am. Dec. 97.



a bill is dishonored by non-acceptance, and is noted or protested and notice of dishonor is given, and it is afterward accepted for honor, the date when it is to become due is calculated from and determined by the date when noted upon its dishonor by non-acceptance. Its due date is not to be determined or affected by the date of the acceptance for honor. The act of "noting" the protest is defined and explained in Sec. 155.

**Protest of bill accepted for honor, etc.** "SEC. 167. WHERE A DISHONORED BILL HAS BEEN ACCEPTED FOR HONOR *supra* PROTEST OR CONTAINS A REFERENCE IN CASE OF NEED, IT MUST BE PROTESTED FOR NON-PAYMENT BEFORE IT IS PRESENTED FOR PAYMENT TO THE ACCEPTOR FOR HONOR OR REFEREE IN CASE OF NEED."

While it is provided in Section 152 that bills other than those appearing upon the face to be foreign bills do not require protest, yet certain bills, inland or foreign, whether they appear upon the face to be such or do not so appear, must be protested for non-payment under certain circumstances. These are bills which have been protested for better security and are then accepted for honor *supra* protest in accordance with this subdivision and a bill which contains a reference in case of need. The former are described under Section 158 and the latter in Sections 161 and 165. Such bills must be protested upon dishonor by non-payment before being presented for payment to the acceptor for honor or the referee in case of need and failure to do so will release the acceptor for honor from liability.

**Presentment for payment to acceptor for honor: how made.** "SEC. 168. PRESENTMENT FOR PAYMENT TO THE ACCEPTOR FOR HONOR MUST BE MADE AS FOLLOWS:  
1. IF IT IS TO BE PRESENTED IN THE PLACE WHERE THE PROTEST FOR NON-PAYMENT WAS MADE, IT MUST BE PRESENTED NOT LATER THAN THE DAY FOLLOWING ITS MATURITY.



2. IF IT IS TO BE PRESENTED IN SOME OTHER PLACE THAN THE PLACE WHERE IT WAS PROTESTED, THEN IT MUST BE FORWARDED WITHIN THE TIME SPECIFIED IN SECTION ONE HUNDRED AND FOUR."

The acceptor for honor is entitled to have the bill presented to him for payment and presentment must be made to him within the time provided in this section. If the bill is to be presented to him in the place where it was protested for non-payment it must be presented not later than the day following its maturity. "Place" here means city or village, or business community as defined under Section 103, and attention is directed to Section 85 fixing the maturity of instruments which fall due on Saturday, Sunday or any holiday. When the bill is not to be presented to the acceptor for honor in the place where it was protested it must be forwarded within the time provided in Section 104 for giving notice of dishonor by non-payment. The instrument need not and should not be forwarded to the acceptor for honor but should be sent to some other person or a bank at that place, and that person or bank authorized to present the bill to him and demand its payment. The presentment must be made at the place named in the bill, if a place of payment is specified, or at the usual place of business or residence of the acceptor for honor unless a different place of presentment is designated in his acceptance. (See Sec. 73.) If the acceptor for honor does not pay the bill the instrument must again be protested at the place where it is presented to him (Sec. 170) and notice of its non-payment must be given to all parties who are to be charged upon the dishonored instrument, in the manner and within the time required by the provisions of Sections 89 to 118, inclusive.

**When delay in making presentment is excused.**

“SEC. 169. THE PROVISIONS OF SECTION EIGHTY-ONE APPLY WHERE THERE IS DELAY IN MAKING PRESENTMENT TO THE ACCEPTOR FOR HONOR OR REFEREE IN CASE OF NEED.”

Any of the circumstances which will excuse delay in making presentment of any negotiable instrument for payment as provided in Section 81 will excuse delay in making presentment for payment to the acceptor for honor or to the referee in case of need. But when the causes of the delay no longer prevent it the presentment must be made with the same degree of diligence as is required by that section in other cases.

**Dishonor of bill by acceptor for honor.**

“SEC. 170. WHEN THE BILL IS DISHONORED BY THE ACCEPTOR FOR HONOR IT MUST BE PROTESTED FOR NON-PAYMENT BY HIM.”

Upon dishonor of the bill by the failure or refusal of the acceptor for honor to pay it when called upon to do so at its presentment in accordance with Section 168, it must be again protested. Thus, such a bill may require three protests: First, upon its dishonor for non-acceptance by the drawee, next, upon dishonor by his non-payment, and lastly, by dishonor by non-payment by the acceptor for honor if he fails to pay the bill at maturity, and upon each protest notice of dishonor is required to be given the drawer and all indorsers who are to be held upon the instrument. The certificate of protest usually states that notice of dishonor was duly and properly given upon dishonor of the instrument and when it does, that recital is *prima facie* evidence that it was done.<sup>7</sup> When there are several acceptors for honor either of the whole or parts of the sum called for by the bill, it would, it seems, be necessary to make protest upon the dishonor of each.

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7. Zollner vs. Moffitt, 222 Pa. 644, 72 A. 285.

## SUBDIVISION V I.

PAYMENT FOR HONOR *Supra* PROTEST.

Section		Section	
171	Who may make payment for honor.	175	Effect on subsequent parties where bill is paid for honor.
172	Payment for honor; how made.	176	Effect of refusal of holder to receive payment for honor.
173	Declaration before payment for honor.	177	Rights of payer for honor.
174	Preference of parties offering to pay for honor.		

The general rule of law that a stranger cannot voluntarily pay the debt of another without his knowledge and consent and acquire the right of re-imbursement, is subject to the exception that in the case of bills of exchange, after protest for non-payment, any person, whether he be a stranger or one already a party to the bill, may intervene and pay it for the honor of some other party. The payment is made in this manner when it is desired to protect the credit of the bill generally, or of the particular party for whose honor it is made. Of course the obviously easy way to accomplish the same purpose is for the person who desires to take up the bill to take it by transfer from the holder. There are no difficulties in the way of accomplishing this if the bill is one payable to bearer or is indorsed in blank and it will not then require the indorsement of the holder. (Sec. 30.) If it requires his indorsement he may transfer the bill without himself incurring any liability upon it by indorsing without recourse (Sec. 38), if he is unwilling to add his name to the security of the instrument. If he will not consent to any form of transfer, the payment for honor must be resorted to. The exception is applicable

only to bills of exchange and it is not extended even to negotiable notes.

The following sections prescribe the manner in which the payment for honor must be made and the rights of the payer for honor and the liability to him of the parties upon the instrument.

**Who may make payment for honor.** "SEC. 171. WHERE A BILL HAS BEEN PROTESTED FOR NON-PAYMENT, ANY PERSON MAY INTERVENE AND PAY IT *supra* PROTEST FOR THE HONOR OF ANY PERSON LIABLE THEREON OR FOR THE HONOR OF THE PERSON FOR WHOSE ACCOUNT IT WAS DRAWN."

Payment for honor may be made by any person, whether an acceptor for honor or not, or whether or not he is already a party to the bill, after the bill has been protested for non-payment. His payment is called a payment "*Supra* Protest," that is, he pays it after the protest, for the honor of some person liable upon the bill, or for the one for whose account it was drawn. He is thereupon entitled to receive the bill as is provided in Sec. 177. If it is made in strict accordance with the provision of this subdivision of the Act, such a payment is not deemed to be a voluntary payment made by a third person, a stranger (Sec. 172), and does not discharge the instrument when it is made in the manner described in the next section although made by a party, even the drawee, unless the bill is drawn against funds of the drawer in his hands and he is bound to pay it.<sup>1</sup>

**Payment for honor: how made.** "SEC. 172. THE PAYMENT FOR HONOR *supra* PROTEST IN ORDER TO OPERATE AS SUCH, AND NOT AS A MERE VOLUNTARY PAYMENT, MUST BE ATTESTED BY A NOTARIAL ACT OF HONOR WHICH MAY BE APPENDED TO THE PROTEST OR FORM AN EXTENSION TO IT."

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1. Konig vs. Bayard, 1 Pet. (U. S.) 250, 261, 7 L. Ed. 132.  
Note in 92 Am. Dec. 579.



Considerable formality accompanies a payment for honor. This is in order that it may be distinguished from a mere voluntary payment. The latter discharges the bill as upon payment by a primary party, while a payment for honor discharges from liability only certain parties to the instrument and constitutes the payer for honor a purchaser of the bill with all the rights of the holder to whom he makes the payment (Sec. 175). It must therefore be attended and attested by a notarial act of honor which must be executed upon or attached to the protest, or so identified with it that it can readily be perceived to be an extension of it, that is, following after and consequent upon the protest. The notarial act of honor is described in the next section.

Ordinarily when a third person takes up the instrument after maturity without the formality incident to a payment for honor, his act is presumed to be a purchase rather than a payment.<sup>2</sup> Whether it is to be so regarded, however, will depend upon the intention of the parties, and this is to be determined from the acts and declarations of the parties themselves and the circumstances surrounding the transaction.<sup>3</sup>

Whatever inconveniences and difficulties such a payer may encounter when he comes to recover his outlay upon the bill can all be avoided if he will declare his intention to pay for honor and execute it in accordance with the requirements of this subdivision.

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2. *Johnson vs. Schnabaum*, 86 Ark. 82, 86, 109 S. W. 1163.  
*Mfrs. Nat'l Bk. vs. Thompson*, 129 Mass. 438, 37 Am. R. 376.  
*Irving Bk. vs. Wetherald*, 36 N. Y. 335.  
*Cantrel vs. Davidson*, 180 Mo. A. 410, 168 S. W. 271.
  3. *Wood vs. Guarantee Tr. Co.*, 128 U. S. 416, 32 L. Ed. 472.  
*Prather vs. Hairgrove*, 214 Mo. 142, 112 S. W. 552.  
*People's Bk. vs. Craig*, 63 Oh. St. 374, 59 N. E. 102, 81 Am. S. R. 639, 52 L. R. A. 872.



**Declaration  
before payment  
for honor.**

“SEC. 173. THE NOTARIAL ACT OF HONOR MUST BE FOUNDED ON A DECLARATION MADE BY THE PAYER FOR HONOR OR BY HIS AGENT IN THAT BEHALF DECLARING HIS INTENTION TO PAY THE BILL FOR HONOR AND FOR WHOSE HONOR HE PAYS.”

The notarial act to be written upon the protest or appended to it, or which must be identified with it, must contain a statement that the payer for honor or his agent, who is authorized to act for him in that particular matter and for that purpose, has declared his intention to pay the bill for honor. It must also state for whose honor the payment is made. It does not require the signature of the payer for honor or his agent, it being sufficient that he or his agent declare his intention to the notary who thereupon, over his own signature and seal, writes out the declaration of honor. He then makes a record of the declaration in the protest, or appends it to the protest, or having already written out the protest, writes out a separate declaration for honor and identifies it with the protest by reference to it, thus completing the notarial act of honor.

**Preference of  
parties offering  
to pay for honor.**

“SEC. 174. WHERE TWO OR MORE PERSONS OFFER TO PAY A BILL FOR THE HONOR OF DIFFERENT PARTIES, THE PERSON WHOSE PAYMENT WILL DISCHARGE MOST PARTIES TO THE BILL IS TO BE GIVEN THE PREFERENCE.”

This section does not seem to require explanation. No very good reason can be conceived why a holder should want to prefer one offer to pay for honor over another and he is directed by this section to accept that one which will discharge the most parties to the bill. It is within the possibilities, of course, that the holder might fail to give preference to that offer which would discharge the most parties and in that case it is also quite possible that complications will arise. The payer for honor whose payment he accepts will receive the bill and

be subrogated for and succeed to all the rights and duties of the holder. (Next section.) Perhaps, in view of Section 120, Sub-section 4, Title I, wherein it is provided that secondary parties are discharged by a valid tender of payment made by a prior party, those parties will be discharged who stand between that one on whose behalf a tender was made and the one on whose behalf the offer to pay for honor was accepted. Perhaps Section 176 may be regarded as adding cumulative force to the suggestion that they might be, for you will observe it provides that the holder loses his right of recovery against any party who would have been discharged by such payment. If the holder lost this right by his failure to accept the tendered payment he cannot transmit it to the payer for honor whose payment for honor he accepts. I am not aware that this question has ever been raised or decided and there seems to be little probability that it ever will be, if the holder is acquainted with his duty to give preference to that offer to pay for honor which will discharge the most parties liable upon the instrument and of the penalty prescribed by Section 176 for his failure to do so.

**Effect on  
subsequent  
parties where  
bill is paid for  
honor.**

“SEC. 175. WHERE A BILL HAS BEEN PAID FOR HONOR, ALL PARTIES SUBSEQUENT TO THE PARTY FOR WHOSE HONOR IT IS PAID ARE DISCHARGED, BUT THE PAYER FOR HONOR IS SUBROGATED FOR, AND SUCCEEDS TO, BOTH THE RIGHTS AND DUTIES OF THE HOLDER AS REGARDS THE PARTY FOR WHOSE HONOR HE PAYS AND ALL PARTIES LIABLE TO THE LATTER.”

Upon payment for honor having been made all parties whose liability upon the bill is subsequent to that one for whose honor the payment was made, are discharged. The payer for honor is regarded as a purchaser of the bill who takes it as by indorsement from the holder and is invested with all his rights as against

the person for whose honor the payment was made and all parties liable to that person. If the holder is a holder in due course, the payer for honor becomes so notwithstanding the fact that he acquires the bill after maturity (Sec. 58). He is also charged with all the duties of the holder and is obliged to take all steps required of the holder in order to charge the party for whose honor the instrument is paid and to charge all other parties liable to such person. He is, therefore, not excused from giving notice of dishonor if none had been given by the holder previous to his payment for honor<sup>4</sup> and, in some States, it has been held that he must himself, within a reasonable time, give notice of his payment for honor or cause it to be given.<sup>5</sup>

**Effect of refusal of holder to receive payment for honor.**

“SEC. 176. WHERE THE HOLDER OF A BILL REFUSES TO RECEIVE PAYMENT *supra* PROTEST, HE LOSES HIS RIGHT OF RECOURSE AGAINST ANY PARTY WHO WOULD HAVE BEEN DISCHARGED BY SUCH PAYMENT.”

The section above states the law in such obviously plain language that no explanation is necessary. It is difficult to conceive of any reason why a holder should refuse payment when it is offered to him but if he does, the section declares that he cannot recover from any party who would have been discharged by the payment. The offer must, of course, be accompanied by a valid tender, and what is considered to be such a tender is defined in Section 120. See observations under Section 174.

**Rights of payer for honor.**

“SEC. 177. THE PAYER FOR HONOR, ON PAYING TO THE HOLDER THE AMOUNT OF THE BILL AND THE NOTARIAL EXPENSES INCIDENTAL TO ITS DISHONOR, IS ENTITLED TO RECEIVE BOTH THE BILL ITSELF AND THE PROTEST.”

4. *Lenox vs. Leverett*, 10 Mass. 1, 6 Am. Dec. 97.

5. *Wood vs. Pugh*, 7 Ohio (Part 2) 501.

*Gazzam vs. Armstrong*, 3 Dana (Ky.) 554.

The payer for honor must pay the amount due upon the bill, including interest if it is so payable. If it is not payable with interest and is not expressly payable without interest, he will be required to pay interest from the date of maturity to the date of his payment. In addition thereto he must pay all notarial expenses caused by the dishonor and protest. Upon doing this the bill and protest must be given to him. He then has the right to enforce it against the party for whose honor he paid it and against all parties who are liable to that one.



SUBDIVISION VII.

BILLS IN A SET.

Section		Section	
178	Bills in sets constitute one bill.	181	Acceptance of bills drawn in sets.
179	Rights of holders where different parts are negotiated.	182	Payment by acceptor of bills drawn in sets.
180	Liability of holder who indorses two or more parts of a set to different persons.	183	Effect of discharging one of a set.

Bills in a set are such of which an original and one or more duplicate parts are drawn and issued at the same time. Their most common use is in the form of foreign exchange issued in or upon foreign countries. Such bills, of no matter how many parts they may consist, constitute but one bill when each part contains a reference to the other part or parts and each is separately numbered. They are usually drawn in three and sometimes as many as four parts. The separate numbering and reference to the other parts contained in each is, of course, intended to be and operates as a notice to every party and to the drawee, that the bill has been issued in several parts. A foreign bill is so issued in order to avoid delay and inconvenience which may result from the loss or miscarriage of the bill and to facilitate its transmission for acceptance or payment, and to accomplish this the separate parts are usually sent by different means or at different times, or one part sent directly to the drawee for acceptance and the others negotiated.<sup>1</sup>

1. Byles on Bills, 387.  
Caras vs. Thalmann, 138 App. Div. (N. Y.) 297.

**Bills in sets constitute one bill.**

“SEC. 178. WHERE A BILL IS DRAWN IN A SET, EACH PART OF THE SET BEING NUMBERED AND CONTAINING A REFERENCE TO THE OTHER PARTS, THE WHOLE OF THE PARTS CONSTITUTES ONE BILL.”

A bill issued and marked as is provided in this section is notice to every person that its parts, other than that one exhibited to him, exist, and when more than one part of a bill drawn in a set is negotiated the holders' rights and the liability of one who indorses two or more parts to different persons, and their manner of acceptance and payment are provided for in the five succeeding sections.

**Rights of holders where different parts are negotiated.**

“SEC. 179. WHERE TWO OR MORE PARTS OF A SET ARE NEGOTIATED TO DIFFERENT HOLDERS IN DUE COURSE, THE HOLDER WHOSE TITLE FIRST ACCRUES IS AS BETWEEN SUCH HOLDERS THE TRUE OWNER OF THE BILL. BUT NOTHING IN THIS SECTION AFFECTS THE RIGHTS OF A PERSON WHO, IN DUE COURSE, ACCEPTS OR PAYS THE PART FIRST PRESENTED TO HIM.”

The bill is issued in parts only in order to avoid delay and inconvenience which may result from the miscarriage or loss of the bill and it is not expected that its parts will be separately negotiated. They separate only when they are forwarded for acceptance or payment. If they should be separately negotiated, however, it becomes necessary to determine who is the owner of the bill.

A holder who is not a “holder in due course” yet holds one part of the bill, would not be the owner of the bill as against one in possession of another part who is a holder in due course. (As to who is a holder in due course see Section 52.) But two or more persons may each be a holder in due course of a separate part of the bill, and it then becomes necessary to determine who is the true owner of the bill. In that case, that one whose title first accrues is the real owner. His title “accrues” at the

time he becomes the owner with the qualifications required by Section 52 of the part of the bill which he holds and therefore, and at that time, he becomes entitled to all the other parts of the bill.

Anyone taking less than the whole number of parts of the bill, being advised that other parts exist, does so at his own peril.<sup>2</sup> But if the person upon whom the bill is drawn accepts or pays in good faith in due course any other part of the bill which is presented to him, before the presentment of that part held by another person whose title has first accrued, his rights are not affected by this section. He cannot be required to accept or pay any other part, although the right of some person other than the one whose part of the bill is accepted or paid has first accrued. Payment in "due course" remember, requires that he have no notice that a prior right to payment has accrued to some one other than the one whose part of the bill he has accepted or paid. The term is defined in Section 88.

**Liability of holder who indorses two or more parts of a set to different persons.**

"SEC. 180. WHERE THE HOLDER OF A SET INDORSES TWO OR MORE PARTS TO DIFFERENT PERSONS HE IS LIABLE ON EVERY SUCH PART, AND EVERY INDORSER SUBSEQUENT TO HIM IS LIABLE ON THE PART HE HAS HIMSELF INDORSED, AS IF SUCH PARTS WERE SEPARATE

BILLS."

A holder of a set of bills, however, who indorses two or more parts to different persons is liable upon all. And each indorser is liable upon that part which he has indorsed. Since only one part of a bill drawn in a set will be accepted, and paid, all other parts which have been separately negotiated will return to and must be taken up by that holder who negotiated them separately. The in-

2. Lang vs. Smith, 7 Bing. 284, 294.

Holdsworth vs. Hunter, 10 C. B. (Eng.) 449.

Byles on Bills, 389.

dorsers' liability is the same as though the parts were separate bills. The parts of a bill which are dishonored by non-acceptance or non-payment must be proceeded upon by the holder<sup>3</sup>, that is, notice of dishonor must be given or they must be protested, if protest is required, in the same manner as though they were separate bills.

**Acceptance of bills drawn in sets.** "SEC. 181. THE ACCEPTANCE MAY BE WRITTEN ON ANY PART AND IT MUST BE WRITTEN ON ONE PART ONLY. IF THE DRAWEE ACCEPTS MORE THAN ONE PART, AND SUCH ACCEPTED PARTS ARE NEGOTIATED TO DIFFERENT HOLDERS IN DUE COURSE, HE IS LIABLE ON EVERY SUCH PART AS IF IT WERE A SEPARATE BILL."

Any part, but only one, of the set of bills may be accepted or paid. If the holder should present more than one part of the bill to the drawee, and he usually presents them all, or if more than one part is presented by separate holders and the drawee accepts more than one, he will, however, be liable upon each acceptance to its holder and if the accepted parts are negotiated to different holders in due course, the acceptor is liable upon each even if the acceptances were all given to the holder who presented the several parts of the bill. The acceptor's liability is to each holder in due course upon the accepted part which he holds, and it is the same as if each were a separate bill. Upon presentment of the separate parts to the drawee it is proper for him to take up and retain all but that part upon which he places his acceptance. This he returns to the holder.

**Payment by acceptor of bills in sets.** "SEC. 182. WHEN THE ACCEPTOR OF A BILL DRAWN IN A SET PAYS IT WITHOUT REQUIRING THE PART BEARING HIS ACCEPTANCE TO BE DELIVERED UP TO HIM, AND THAT PART AT MATURITY IS OUTSTANDING IN THE HANDS OF A HOLDER IN DUE COURSE, HE IS LIABLE TO THE HOLDER THEREON."

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3. Downes & Co. vs. Church, 13 Peters (U. S.) 205.  
Walsh vs. Blatchford, 6 Wis. 422, 425.



Upon paying a bill drawn in a set the acceptor must require that part of the bill which bears his acceptance to be surrendered to him. If he neglects to do so and it is or has been negotiated and at its maturity is still outstanding against him, he is liable to a holder in due course upon such outstanding part bearing his acceptance and must pay that also notwithstanding his payment of any other part of the bill.

Effect of  
discharging one  
of a set.  
Wisconsin.

“SEC. 183. EXCEPT AS HEREIN OTHERWISE PROVIDED, WHERE ANY ONE PART OF A BILL DRAWN IN A SET IS DISCHARGED BY PAYMENT OR OTHERWISE, THE WHOLE BILL IS DISCHARGED.”

Payment of one part, or the discharge in any other manner (as provided in Sections 119 to 125) of one part of the bill, discharges the whole set.<sup>4</sup> This is not so, however, when, as provided in the preceding section, the part of the set bearing his acceptance is not delivered to the acceptor, but has been negotiated and remains outstanding in the hands of a holder in due course. (See Section 182.)

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4. Caras vs. Thalmann, 138 App. Div. (N. Y.) 297.

### TITLE III.

#### PROMISSORY NOTES AND CHECKS. FORMS AND INTERPRETATION.

Section		Section	
184	Promissory note defined; certificates of deposit; bonds and their coupons.	188	Effect where holder of check procures it to be certified.
185	A check defined.	189	When check operates as an assignment.
186	Within what time a check must be presented; memorandum check.		Statement of the duties and liabilities of banks and other agents in the collection of commercial paper. Page 280.
187	Certification of check; effect of.		

In this brief title, after defining a promissory note, the distinction between a check and an ordinary bill is pointed out. This distinction exists principally in the consequences which follow upon, and the legal effect of the failure of the holder to present the check for payment within a reasonable time after its issue, of his failure to give the drawer notice of its dishonor and of its certification when procured by the holder, but another distinctive characteristic of a bank check is that it is always supposed to be drawn upon a fund which exists at its date to the credit of the drawer. The drawer is regarded somewhat the same as a maker of a promissory note, that is, he is, from the inception of the check, the principal debtor, and while prompt presentment for payment after its issue or last negotiation is required to charge indorsers upon a check, the failure of the holder to present the check for payment within a reasonable time after its issue and notify the drawer of its dishonor if it is not paid by the bank upon which it is drawn, will release him only if he has suffered a loss through its extended negotiation or through a delay or neglect of the holder to pre-

sent it promptly for payment. The loss contemplated is a loss which may occur by the failure of the bank upon which the check is drawn, a risk which the law imposes upon the drawer for a reasonable length of time after its issue. After a reasonable time, however, his risk terminates and is transferred to the holder. At another place (Section 186) something will be said about the degree of diligence required of the holder and about the effect of the certification of the check when procured by the holder. (Sec. 188.)

**Promissory note** “SEC. 184. A NEGOTIABLE PROMISSORY NOTE defined.

WITHIN THE MEANING OF THIS ACT IS AN UNCONDITIONAL PROMISE IN WRITING MADE BY ONE PERSON TO ANOTHER, SIGNED BY THE MAKER ENGAGING TO PAY ON DEMAND, OR AT A FIXED OR DETERMINABLE FUTURE TIME, A SUM CERTAIN IN MONEY TO ORDER OR TO BEARER. WHERE A NOTE IS DRAWN TO THE MAKER'S OWN ORDER, IT IS NOT COMPLETE UNTIL INDORSED BY HIM.”

As has already been stated in the introduction to the first Title and at Section 3 in that Title, not all promissory notes are negotiable and a written promise to pay money may be regarded as a promissory note although it is not negotiable. Its interpretation and enforcement, however, are not governed by this Act if it is not a negotiable instrument. This section contains the definition of a “negotiable promissory note” and as it will be seen by reference to Section 1 of Title I, the definition incorporates all of the requirements of such an instrument in order to constitute it a negotiable promissory note. That section and its explanations are referred to without further observation. By Section 30 the negotiation of an instrument payable to order is accomplished by its indorsement and delivery by the holder to his transferee. This section is related to Section 30 and to Sections 15 and 16 in that it provides that a promissory note, when payable to the maker's own order, is incom-

plete until it is indorsed by him. When such an instrument is negotiated without the indorsement of the maker it will not bind him unless the transfer was made under such circumstances as will entitle the holder by reason of the provisions of Section 49, to require him to indorse it.

You will find no special provision in the Act upon the subject of certificates of deposits or Bonds and their Coupons. These two forms of negotiable instruments are in effect and in fact promissory notes.<sup>1</sup>

**Certificates of deposit.** The first, a Certificate of Deposit, is the written acknowledgment of a bank that it has received from the person to whom it is issued the sum of money it mentions, and it contains the promise of the bank to repay the amount upon demand or at a future specified date upon surrender of the certificate. Therefore it contains all the elements of, and is in fact, the promissory note of a bank.<sup>2</sup> It is fully negotiable if it contains words of negotiability and otherwise meets the requirements of the first Title of the Act (Sections 1 to 23).

The only important distinction between a certificate of deposit and a promissory note may be said to lie in the fact that, by judicial interpretation of the rules of the Law Merchant, (which are yet applicable in the absence of express provision in this Act to the contrary) demand for payment is necessary before action to recover from

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1. *Forest vs. Safety Bkg. & Tr. Co.*, 174 Fed. 345.  
*Jensen vs. Wilself*, 36 Nev. 37.  
*Curran vs. Witter*, 68 Wis. 16.  
*Maxwell vs. Agnew*, 21 Fla. 154.  
*Blackman vs. Lehman, Durr & Co.*, 63 Ala. 547, 35 Am. R. 57, also see Note 4.
  2. *Pierce vs. State Nat'l Bk.*, 215 Mass. 18.  
*Citizens Nat'l Bk. vs. Brown*, 45 Oh. St. 39, 11 N. E. 799, 4 A. S. R. 526.  
*Brummagin vs. Tallant*, 29 Calif. 503, 89 Am. Dec. 61.



the maker of the certificate.<sup>3</sup> The decisions are by no means uniform to this effect, but those so holding are regarded as based upon the sounder principle. As a consequence a division of opinion likewise exists as to the application of the statute of limitations, some courts holding that it begins to run from the date of the certificate, others from the date of demand. The view that the statute begins to run from the date of the certificate would seem to be supported also by Section 70 of the Act which seems to dispense with the necessity for demand, particularly when the certificate has been outstanding long enough to raise a presumption that it is past due,<sup>4</sup> although it is probably correct to conclude that certificates of deposit were not contemplated when the section was written. In the presence of conflict in regard to the time when the statute of limitations does begin to run and the necessity for demand, it is perhaps better for the holder to adopt the first view and thus preserve his rights beyond the possibility of mistake.

Bonds, if they contain words of negotiability, are likewise regarded as, and are in fact the promissory notes of the person, corporation or the department of government which issues them.<sup>5</sup> Their negotiability is not affected by the fact that they bear a seal. (Section 6, Title I.)

Their coupons, so named from the French word "*couper*" meaning "to cut," express the amount of in-

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3. *Hillsinger vs. Georgia R. Bk.*, 108 Ga. 357, 33 S. E. 985, 75 Am. S. R. and note.

*Elliott vs. Cap. City St. Bk.*, 128 Iowa 275, 103 N. W. 777, 111 Am. S. R. 198, 1 L. R. A. N. S. 1130 and note.  
*Cottle vs. Buffalo Mar. Bk.*, 166 N. Y. 53, 59 N. E. 736.

4. *Auten vs. Crahan*, 81 Ill. A. 502.  
 Sec 64 Am. Dec. 428, note; 1 L. R. A. 299 note.  
 Also see Note 1.

5. *Gould vs. Venice*, 29 Barb. (N. Y.) 442.  
*Brainerd vs. N. Y., etc., R. R. Co.*, 25 N. Y. 496, 500.

terest payable and the time at which each installment will be due and, as the date of its maturity approaches, the maturing interest coupon is cut off and presented for payment at the place where it is payable on the date when it is due. The coupons are designed to be the convenient instruments for the collection of the interest installments upon the principal obligation, the bond, as they mature and they enable the holder of the bond to dispense with the necessity of presenting it for the purpose of crediting upon it the interest payments as they are made.

Anything which affects the validity of the bond likewise affects its coupons but they are so far regarded as separate instruments after maturity that they will then bear interest if the maker of the bond defaults in the interest payments and when detached have all the attributes of negotiable instruments and recovery upon them may be had in a separate action when they are themselves payable to order or to bearer.<sup>6</sup>

The bond, of course, must bear the seal of its maker and be signed by its issuing officers, but no seal is required upon the coupons and the signatures upon them are usually a printed or lithographed fac-simile of the signatures upon the bond.

It is no objection to the negotiability of the bond that it contains a statement of the transaction out of which it arises (Sec. 3), is payable in a particular kind of current money (Sec. 6), that it contains a provision allowing its registry or gives the holder a choice to require something to be done in lieu of its payment in money, for example, the privilege to exchange it for securities of a different kind. (Sec. 4.)

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6. *Thompson vs. Perrine*, 106 U. S., 589, 27 L. Ed. 298.  
*Kas. City, etc., R. R. Co. vs. Cobb*, 100 Ala. 228, 13 S. 938.  
*Trustees of the I. I. Fund vs. Lewis*, 34 Fla. 424.

Upon registry the bond is transferable in somewhat the same manner as certificates of stock are transferred, then requiring indorsement and the entry of each transfer upon the register of the corporation. Bonds are usually payable to the bearer, and, containing a promise for the unconditional payment of money at a definite and fixed time, or on demand after date, they are in reality the sealed promissory notes of their makers.

**A check defined.** "SEC. 185. A CHECK IS A BILL OF EXCHANGE DRAWN ON A BANK PAYABLE ON DEMAND. EXCEPT AS HEREIN OTHERWISE PROVIDED, THE PROVISIONS OF THIS ACT APPLICABLE TO A BILL OF EXCHANGE PAYABLE ON DEMAND APPLY TO A CHECK."

A check drawn upon a bank or a banker is considered to be a bill of exchange payable upon demand, unless it is upon its face made payable at a specific date.<sup>7</sup> Every provision of this Act which governs the interpretation and enforcement of the liabilities and rights of parties to a bill payable upon demand, or at sight, is, by this section, made applicable to a check unless by the Act itself it is otherwise provided. All of its provisions in regard to notice of non-payment and in regard to protest, if the check is upon its face a foreign bill (Sec. 129) must be complied with in order to charge indorsers. Failure to do so will discharge them as upon failure to give notice or make protest of a bill of exchange.

But in their effect upon the drawer the provisions of the Act, in this respect, are greatly modified by the next section.

**Within what time a check must be presented.**  
"Illinois.

"SEC. 186. A CHECK MUST BE PRESENTED FOR PAYMENT WITHIN A REASONABLE TIME AFTER ITS ISSUE" OR THE DRAWER WILL BE DISCHARGED FROM LIABILITY THEREON TO THE EXTENT OF THE LOSS CAUSED BY THE DELAY."

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7. Riddle vs. Bk. of Montreal, 145 App. Div. (N. Y.) 207.

A check ought not to be held an unreasonable length of time either by the payee or by any indorsee. Unless it is the check of a bank and was intended for negotiation, there is no good reason why it ought not to be presented at once, after its receipt. A check differs from other bills of exchange payable upon demand in that it is presumed to have been intended for immediate payment and it must be presented for payment within a reasonable time after its issue and not, as is the case with an ordinary bill, after its last negotiation, in order to preserve the liability of the drawer if a loss is sustained through no fault of his. While a check may continue in negotiation for any reasonable length of time after its issue without presentment for payment at the bank upon which it is drawn, yet if it is so delayed and loss is sustained, the drawer will be released from liability to the extent of the loss he may have suffered by the delay. Thus, if the bank upon which a check is drawn which has not been presented for payment within a reasonable time were to fail, and its failure cause the loss of the money called for by the check, the drawer will be released from liability upon it. If the check has been transferred from one holder to another without having paused an unreasonable length of time in the possession of any one of them, the indorsers will not be discharged.<sup>8</sup> But if it is detained for an unreasonably long time at any negotiation then such indorsers as are not responsible for the delay will be released from liability by its unreasonable detention. (Sections 7 and 71.)

Upon this subject it is desirable to distinguish more clearly the duty which the holder owes to the drawer and other parties to a check to present the same for pay-

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8. *Columbian Banking Co. vs. Bowen*, 134 Wis. 218, 114 N. W. 451.  
*Plover Svgs. Bk. vs. Moodie*, 135 Ia. 685, 110 N. W. 29, 113 N. W. 476.



ment with the utmost dispatch, when it is no longer to be negotiated. The authorities are quite uniform that the payee or indorsee of a check, or a bank receiving it for deposit or collection, owes to every other party to the instrument the duty to present it and obtain the money due upon it immediately. The time for its presentment is usually the day of and never later than the day after its receipt when a check is deposited in bank, and the established and known custom of the bank in regard to the collection of checks, unless it transcends reasonable limits or is contrary to law, will prevail to determine whether or not it has been negligent in the performance of its duty. When out of town checks are deposited with a bank for collection it owes to its depositor the duty to present them by the most practical and direct method and if it or its banking connections, through which it makes such collections, unduly and unnecessarily delay their presentment and collection and loss is thereby sustained, whether by the failure of the bank upon which the check is drawn or by its dishonor for want of funds, any loss occasioned by its delay must, as between the depositor and the bank, be borne by the bank. At the end of this Title I shall describe more fully the duty of banks in the collection of checks and the methods employed.

You will remember that upon the question of what is or is not a reasonable time the nature of the instrument, whatever usage of trade there may be in regard to such instruments, and the facts of each particular case will be taken into consideration. (Secs. 7, 71, 193.)

When the immediate presentment of the check is not intended by the parties this is usually indicated by writing the word "Memorandum" across its face. While such a check must be paid whenever it is presented, unless it fixes a date when it is

**Memorandum  
check.**



payable, the delay in presenting it being altogether contemplated by the parties and expressed by the nature of the instrument itself, cannot affect their liability upon the instrument.<sup>9</sup> Such a check is issued as an evidence of an indebtedness owing by the drawer to the person to whom it is issued and to the extent that its immediate presentment is thereby waived by the drawer and all parties, the application of the Act in respect to its immediate presentment is thereby modified. In all other respects a memorandum check is governed by its provisions.

**Certification of check: effect of.** "SEC. 187. WHERE A CHECK IS CERTIFIED BY THE BANK ON WHICH IT IS DRAWN, THE CERTIFICATION IS EQUIVALENT TO AN ACCEPTANCE."

The certification of a check by the bank upon which it is drawn is the same as an acceptance of a bill of exchange and its effect is to make the bank the principal debtor upon the instrument. It does not relieve the holder of the duty to present the check for payment within a reasonable time, or in any other way alter the rights and duties of the drawer and indorsers, unless the holder himself procures its certification. Inasmuch as certification of a check has the effect of making the bank which certifies it the principal debtor, the check is thereby secured to the extent that the strength and worth and ability of the bank to pay its obligations are considered security. The liability which the acceptor assumes by certification is discussed under Section 62.

**Effect where the holder of check procures it to be certified.** "SEC. 188. WHERE THE HOLDER OF A CHECK PROCURES IT TO BE ACCEPTED OR CERTIFIED, THE DRAWER AND ALL INDORSERS ARE DISCHARGED FROM LIABILITY THEREON."

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9. Franklin Bk. vs. Freeman, 16 Pick. (Mass.) 535.

Cushing vs. Gore, 15 Mass. 69.

Dykens vs. Leather Mfrs. Bk., 11 Paige (N. Y.) 612.

Now, when the holder of the check himself procures its certification by the bank he thus, in effect, substitutes the bank as the only party to whom he looks for payment and the drawer and all parties who indorsed the check before certification are discharged from liability upon it. This does not occur, however, when the drawer procures the certification before delivery, even if it is done at the holder's request.<sup>10</sup>

**When check operates as an assignment.**

“SEC. 189. A CHECK OF ITSELF DOES NOT OPERATE AS AN ASSIGNMENT OF ANY PART OF THE FUNDS TO THE CREDIT OF THE DRAWER WITH THE BANK, AND THE BANK IS NOT LIABLE TO THE HOLDER, UNLESS AND UNTIL IT ACCEPTS OR CERTIFIES THE CHECK.”

A check is merely an order upon the bank upon which it is drawn directing that upon presentation the bank shall pay the amount of money for which it is written to the person whom it names or to his order, or directing that it be paid to the bearer. It is not of itself an assignment, that is, a setting apart from the rest of the money to the drawer's credit in bank, of the amount for which it calls. This section makes this express provision and thereby repudiates all decisions to the contrary.

When the bank upon which the check is drawn accepts it or certifies it, however, it does then operate as an assignment of so much of the drawer's deposit as is required to pay it and the money to pay the check upon presentation is then immediately, by operation of law, set aside out of the drawer's account for that purpose.<sup>11</sup> If the bank permits the drawer to withdraw his funds required for its payment or to use them for any other

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10. Randolph Nat. Bk. vs. Hornblower, 160 Mass. 401.

11. Blake vs. Hamilton, etc., Bk., 79 Oh. St. 189, 87 N. E. 73.

Wright vs. McCarthy, 92 Ill. A. 120.

Poess vs. Twelfth Ward Bk., 43 Misc. 45, 86 N. Y. S. 857, 14 Ann. Cas. 439.

purpose, it will, nevertheless, be obliged to pay the check so accepted by certification whenever it is presented for payment.

I shall next indicate the principal duties of banks and other collecting agencies in regard to the collection of checks and other commercial paper.

A BRIEF STATEMENT OF THE LAW RELATING TO THE PRINCIPAL DUTIES AND LIABILITIES ASSUMED BY BANKS AND OTHER AGENTS IN THE COLLECTION OF COMMERCIAL PAPER, AND THE METHODS EMPLOYED.

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The deposit of commercial paper with a bank for collection constitutes the bank the agent of the holder to collect it and it owes to its customer that degree of care in the performance of this duty which it would use to protect its own interests.

When the instrument is left for collection at the bank at which it is payable, the bank becomes the agent of the **Paper payable at the collecting bank.** holder to receive payment. Its duty requires the collecting bank to charge such an instrument to any sufficient deposit which the debtor may have there to the credit of his general account on the day of its maturity, but the bank is not required to appropriate any partial sum belonging to him if it is insufficient to pay the whole amount of the instrument or to appropriate any special deposit for that purpose. If the instrument is made payable at a bank the fact that it is so made payable is equivalent to an order on the bank to pay it for the account of the principal debtor. (See Sec. 87 of Title I.) If the debtor at the date of its maturity deposits the money required to pay the instru-

ment, for the purpose of paying it, and the instrument is not presented at the bank where it is payable, his readiness and ability to pay there will relieve him of the payment of interest and costs if the instrument is not presented there. (Sec. 70.) If the bank at which it is payable fail after that date, his ability to pay the instrument there at its maturity would, in many cases, effect his discharge, and if the instrument is afterwards dishonored secondary parties will be released by the failure of the holder to make proper presentment. (Sec. 70, 120.)

It is quite immaterial whether or not the bank receives compensation for the service it renders in collecting the instrument and the degree of care which it is required to exercise in the performance of its duty is the same whether it is or is not paid for doing so.<sup>1</sup> It is very well recognized that banks frequently, in fact almost always engage in this service without compensation, principally with a view to the advantage they will thereby gain in patronage, or to the profits which they expect to derive because of the chance that they may be allowed to use the proceeds of their collections.

The authority to collect continues after the maturity of the paper, if it remains unpaid and in the possession of the bank, and in the absence of notice that its agency to collect has terminated, the debtor may safely pay the instrument to the collecting bank at any time after maturity.<sup>2</sup> If the instrument is in the possession of the bank at or after maturity its possession is *prima facie* evidence of its right to receive payment and, as to the parties to the instrument, payment at the collecting bank will

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1. Exchange Bk. vs. Third Nat'l Bk., 112 U. S. 276, 288, 28 U. S. (L. Ed.) 722.

Bailie vs. Augusta Svgs. Bk., 95 Ga. 277, 284, 21 S. E. 717.

2. Alley vs. Rogers, 19 Gratt (60 Va.) 366, 383.



then discharge the instrument even if it is not surrendered.<sup>3</sup> (Secs. 88, 119 of Title I.)

**The usual method of indorsing the instrument for collection and its effect.**

The restrictive form of indorsement, which is explained in Sections 36 and 37 of Title I, is usually employed when an instrument, particularly a check, is deposited with a bank, but on bills and notes left for collection the special or blank indorsement described in Section 36 of Title I is most frequently used.

The restrictive indorsement, as is explained in the sections referred to, constitutes the indorsee the agent of the indorser and does not transfer to the indorsee the indorser's ownership in the funds represented by the instrument. (Sec. 37.) Its language is usually "Pay to ..... (name of bank) for collection and credit to the account of..... (signature of depositor)."

This form of indorsement is a notice to subsequent holders that the instrument may be transferred only for the purpose indicated in the indorsement. One taking the instrument under this form of indorsement, although it is sufficient to enable him to bring an action upon it in his own name, acquires no ownership in the instrument or its proceeds except in his representative capacity as the agent of the indorser. This form of indorsement is also regarded as notice to the person who is obliged to pay the instrument that if he pays it to any person other than the one named, or his representative, he does so at his own peril. (Sec. 36.)

**Duties in general of a collecting bank.** If specific instructions are given as to the method to be pursued in collecting the instrument these must be strictly observed by the

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3. Bliss vs. Cutter, 19 Barb. (N. Y.) 9.



collecting bank,<sup>4</sup> and its sub-agents, to whom it must transmit them.<sup>5</sup> In the absence of such instructions, however, the bank is required to perform the various duties which are embraced in the business of collections in accordance with its established method, its proper regulations and the law relating to such matters, of which it is presumed to have such a knowledge as is usually possessed by men engaged in that business.<sup>6</sup>

Its established usage in such cases, unless they are unreasonable or contrary to law, will have much influence in determining whether or not it has properly performed its duty. A knowledge of these customs will be imputed to its customer even though he did not in fact know of their existence or application, and it will be presumed that he intended the bank to act in accordance with them.<sup>7</sup>

**Usage can only affect method of collection.** No matter what usage may prevail in regard to the collection of the instrument it will not excuse the performance by the collecting bank of those proceedings which it is obliged to take for the immediate fulfillment of its duty to collect it and to properly protect its customers' rights.<sup>8</sup> It is only the method of their performance which will be affected by custom or usage. No usage will justify its omission to perform any substantial or material duty which the collecting bank is required by law to perform,

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4. Milwaukee Nat'l Bk. vs. City Bk. of Oswego, 103 U. S. 668, 26 U. S. (L. Ed.) 417.

5. See Note in 34 Am. Dec. 309, 77 A. S. R. 627.

6. Morris vs. Union Nat'l Bk., 13 S. D. 329, 332, 83 N. W. 252, 50 L. R. A. 182.

7. Hilsinger vs. Trickett, 86 Oh. St. 286, 99 N. E. 305, Ann. Cas. 1913 D. 421.

Farmers Bk. vs. Newland, 97 Ky. 464.

8. Farley Nat'l Bk. vs. Pollock, 145 Ala. 321, 39 S. 612, 8 Ann. Cas. 370, 117 Am. S. R. 44, 2 L. R. A. N. S. 194.

Nat'l Bk. of Commerce vs. Amer. Exch. Bk., 151 Mo. 320, 332, 52 S. W. 265, 74 Am. S. R. 527.

nor will any usage justify the substitution of any other act as its equivalent. The important and material proceedings to be observed in this business of collection are the presentment and demand for acceptance and payment, notice of dishonor and protest of the instrument if it is not paid. The manner in which they are required to be done under the provisions of the Negotiable Instruments Law is explained in appropriate places in the preceding pages.

**Bills accompanied by documents of shipment or collateral.**

If the instrument which is received for collection is a time bill of exchange requiring acceptance and is payable more than three days after sight, and if it is accompanied by the documents of shipment, these documents, in the absence of any instructions to the contrary, must be released to the drawee by the collecting bank upon his acceptance of the bill unless, in accordance with the customary dealings of the parties, or, by reasonable implication, the contrary was intended.<sup>9</sup> If the instrument is a sight draft, or is payable not more than three days after sight, whether these be days of grace or not, the documents must in no case be delivered until it is paid, in the absence of specific instructions requiring that they be delivered before payment.<sup>9</sup>

**Presentment of bill of exchange requiring acceptance.**

A bank is not liable for its failure to present for acceptance a bill which does not require acceptance and it would be a useless procedure to do so when such an instrument is received for collection, for its duty requires that it at once present the instrument for payment. But

9. Nat'l Bk. of Commerce vs. Merch. Nat'l Bk., 91 U. S. 92, 23 L. Ed. 208.

Commercial Bk. vs. Chicago, etc., R. R. Co., 160 Ill. 401, 43 N. E. 756.

Second Nat'l Bk. vs. Cummings, 89 Tenn. 609, 18 S. W. 115, 24 Am. S. R. 618.

if the bank by a mistaken conclusion or opinion as to the legal effect of the instrument, or by a mistake of facts, should fail to make presentment for acceptance when it is required, or should make it improperly, it would be liable for any loss caused by its mistake. Section 143 of the Act determines when presentment for acceptance must be made and in no other case is it necessary. The third sub-section of that section, you will observe, requires that a draft, even though payable at sight, must be presented for acceptance if it is payable elsewhere than at the residence or usual place of business of the drawee. It is the bank's duty to present a bill for acceptance at once, on the day of its receipt if acceptance is required, unless it is received after business hours, for the reason that only by acceptance can the drawee be bound, and because the owner of the bill obtains the right of an immediate action against the drawer and indorsers upon the failure or refusal of the drawee to accept.<sup>10</sup> (Sec. 151.) It is its duty to obtain a general acceptance unless another is authorized or assented to and, if that cannot be obtained, it must treat the bill as dishonored. (Sec. 142.) The place where the instrument is to be presented for acceptance and the manner of making presentment are described under Section 145.

Upon the dishonor of a bill by non-acceptance the collecting bank is obliged either to give notice of its dishonor or return the instrument to its customer in order that he may do so, and if it chooses the latter course it must return the instrument in time to allow that the notice may be given in accordance with the provisions of this Act.<sup>11</sup> These are to be found in Sections 89 to 118 of Title I, comprising subdivision seven of this Act. If the

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10. *Exch. Bk. vs. Third Nat'l Bk.*, 112 U. S. 276, 291, 28 U. S. (L. Ed.) 722.

11. See Notes in 34 Am. Dec. 61, 34 Am. Dec. 311, 77 A. S. R. 621.

bill requires protest the collecting bank is obliged to deliver the instrument to a notary for that purpose. It must know and be able to determine when protest is required and it will be liable to its customer if loss result from its failure to perform this duty.<sup>12</sup> A bill which is dishonored by non-acceptance need not be presented for payment (Section 151), unless it has been subsequently accepted or has been accepted for honor. (Sec. 167.)

The degree of diligence which the bank is required to exercise in the performance of its duties in respect to the presentment of a bill for acceptance has been described as that degree which a prudent man, careful of his own affairs, would exercise to protect his own interests. The provisions of the Act which govern the manner of making presentment for acceptance are to be found in Secs. 143 to 151 inclusive, Subdivision 3 of Title II.

**Presentment of bill or note for payment.** The requirements of the Uniform Negotiable Instruments Law upon the subject of presentment for payment will be found in Sections 70 to 88 inclusive comprising Subdivision 6 of Title I.

It is the custom of most banks to give notice a few days before the maturity of the instruments which they hold for collection, informing the debtor by this means that the instrument is about to fall due and requesting him to call at the bank and pay it at the proper time. While in many places this custom is very general, an omission to observe it is not regarded as prejudicial to the rights of any of the parties to the instrument, none of whom can, as a matter of right, require the bank to give this notice. But when notice of the approaching maturity of the instrument has been given it does not dispense with any of the requirements of the Act upon the subject of present-

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12. Georgia Nat'l Bk. vs. Henderson, 46 Ga. 487, 12 Am. Rep. 590.  
 Louisville Bank'g Co. vs. Asher, 112 Ky. 138, 65 S. W. 133,  
 99 Am. St. Rep. 283.



ment for payment, or dispense with the necessity of making demand and the duty to give notice of its dishonor if the instrument is not then paid. The presentment for payment must be made notwithstanding the notice of its approaching maturity and notwithstanding even that the collecting bank may have knowledge that the instrument will not be paid when presented. Its effect, however, sometimes produces a waiver of presentment, demand and notice of dishonor and the waiver and the manner in which it is accomplished and under what circumstances it will be implied are discussed in Sections 82, 104, 110 and 111 of Title I.

The presentment must be made even if the party primarily liable upon the instrument is dead. In that case the instrument must be presented for payment to his personal representative. (Sec. 76.)

When two or more persons primarily liable upon the instrument are partners, presentment may be made to either of them, even if there has been a dissolution of the firm, and where several persons who are not partners are primarily liable upon the instrument, presentment must be made to them all. (Secs. 77 and 78, Title I.) The circumstances under which presentment for payment is not required in order to charge the drawer or indorser will be found in Sections 79 and 80 of the first Title.

While the presentment for payment must be made upon the day the instrument falls due if it is a time instrument, or within a reasonable time after its issue if a note or check, or last negotiation if a bill, and it is payable on demand (Sec. 71), any delay in making presentment is excused when the delay is caused by circumstances beyond the control of the holder and not due to his negligence, misconduct or failure to perform a duty (Sec.

**Time when  
presentment for  
payment must be  
made.**



81). What will be taken into account to determine whether or not the instrument has been presented within a reasonable time is discussed under Sec. 71 and other sections there referred to. Presentment for payment if dispensed with altogether under the circumstances mentioned in Section 82. Special provision is made in the act for the presentment of instruments falling due on a Saturday or a Sunday (Sec. 85), and another section (Sec. 192) provides that when the day or the last day for doing any act which is required or permitted by the law to be done falls upon Sunday or a holiday, it may be done on the next succeeding business day.

If the instrument is paid upon presentment the collecting bank must remit the proceeds to the person from whom it received the bill or note for collection unless it appear that another is their true owner.<sup>13</sup> The remittance must be made in accordance with any special instructions which it may have received from its customer or, in the absence of these, in accordance with its general custom,<sup>14</sup> or the customer must be notified of the payment of the instrument and the proceeds held subject to his order. If the collection is made for the account of a depositor and the proceeds are credited to his general account that will be a fulfillment of the bank's duty to remit, unless it is done contrary to his instructions. This procedure is simple enough upon payment of the instrument but upon its dishonor the collecting bank exposes itself to liability for loss unless it strictly observes the requirements of the Negotiable Instruments Law in regard to the procedure then prescribed.

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13. Bank vs. Friar, 88 Mo. App. 39.  
Union Bk. vs. Johnson, 9 Gill & J. (Md.) 297.

14. Harvesting Mach. Co. vs. Yankton Svc. Bk., 15 S. D. 196,  
87 N. W. 974.

Any negotiable instrument which has been dishonored by non-acceptance or non-payment may be protested upon either dishonor, but protest is not required except in the case of a foreign bill of exchange. (Sec. 118.) If the dishonored instrument is a foreign bill (Sec. 129), or a bill which has been accepted for honor, or one which is presented to the referee in case of need (Sec. 161), it must be protested (Secs. 152 and 167). The place and manner of protest, by whom it is to be made and the formalities to be observed in making it, are prescribed in Sections 152 to 160, inclusive, of the Act. You will observe from Section 152 that if any of the requirements of the Act in that regard are omitted the bill will not have been "duly protested" and the drawer and indorsers will be discharged. If this should occur through the negligence of the bank it will be liable to its customer.<sup>15</sup> The subject is explained generally in Sub-division 4 of Title II.

When protest is made, and even if it is not required, it is necessary that notice of dishonor be given to all parties whom the holder desires to charge. A collecting bank, however, being the agent of the holder, may avail itself of the provision of Section 94 of the Act and give the notice to its principal alone, and this it usually does. If a different agreement requires it, or if the collecting bank accepts the instrument for collection under circumstances from which a duty to notify all secondary parties can be reasonably inferred, it will be obliged to give the notice of dishonor to every party and will obligate itself to its customer for any loss he may sustain by its failure to do

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15. Georgia Nat'l Bk. vs. Henderson, 46 Ga. 487, 12 Am. Rep. 590.

so.<sup>16</sup> The provisions of the Act which describe the manner in which it must be done and determine when and to whom the notice must be given will be found in Subdivision 7 of Title I, in sections numbered from 89 to 118, inclusive. If the instrument has been forwarded for collection through its sub-agents by the bank of first deposit, each sub-agent may give the notice to his immediate transferer within the time fixed in Section 94 or he may give it to the parties generally.

If the customer actually knows of the dishonor of the instrument and the formal notice of dishonor to other parties is not required to be given by the bank, the customer must himself proceed at once to notify all those to whom he looks for payment (Sec. 90). He must not wait until the dishonored instrument is returned to him, at least he ought not to delay beyond the time allowed by Sections 103 and 104, which fix the time within which he is required to give the notice to antecedent parties. The effect of the notice, to and by whom it must be given and what parties are benefited by it are discussed in the sections above referred to.

When the collection is to be made at a place other than the place where the collecting bank is located, it is **Selection of sub-agent: degree of care required.** its duty to forward the instrument on the day or the day after its receipt to a sub-agent. It must use due care in the selection of its sub-agent and must not intrust any of its customers' business to one to whom it would not intrust business of its own.<sup>17</sup>

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16. *Auten vs. Manistee Nt. Bk.*, 67 Ark. 243, 54 S. W. 337, 47 L. R. A. 329.

*Louisville Bkg. Co. vs. Asher*, 112 Ky. 138, 65 S. W. 133, 99 A. S. R. 283.

17. *Brown vs. Peoples Svgs. Bk.*, 59 Fla. 163, 52 S. 719, 52 L. R. A. N. S. 608.

*Wilson vs. Carlinville Nat'l Bk.*, 187 Ill. 222, 58 N. E. 250, 52 L. R. A. 632.

*Irwin vs. Reeves Pulley Co.*, 20 Ind. A. 101, 48 N. E. 601, 50 N. E. 317.

If it has received any specific instructions in regard to the collection of the instrument or the manner in which its endeavor to collect it is to be reported to its customer, it must forward these also.<sup>18</sup> Should its sub-agent neglect to acknowledge the receipt of the instrument within a reasonable time after it was sent, the sending bank must make inquiry to learn whether or not it has been received. Any neglect to do so from which a loss results will impose a liability upon the collecting bank to the extent of the loss sustained.<sup>19</sup>

If the sub-agent selected to make the collection is the bank upon which the instrument is drawn, or is in any way interested in the instrument adversely to the interest of its owner, the collecting bank will not be deemed to have used due care in its selection if the sub-agent default in the collection of the instrument or the remittance of the proceeds, and it will be liable to its customer for his loss.<sup>20</sup>

The Act, in Title III, defines a check to be a bill of exchange drawn on a bank and if its presentment for **The collection of** payment is delayed an unreasonable **checks.** length of time after its issue Section 186 provides that the drawer will be released from liability to the extent of any loss he may thereby suffer by reason of the delay. Elsewhere the act provides that a bill of exchange payable on demand must be presented for payment within a reasonable time after its last negotiation (Section 7). You will observe then that checks re-

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18. Borup vs. Nininger, 5 Minn. 523.

19. Shipsey vs. Bowery Nat'l Bk., 59 N. Y. 485.  
Second Nat'l Bk. vs. Merch. Nat'l Bk., 111 Ky. 930.

20. First Nat'l Bk. vs. Fourth Nat'l Bk., 6 C. C. A. 183, 56 Fed. 967.

Planters' Mercantile Co. vs. Armour Pkg. Co., 109 Miss. 470,  
69 So. 293.

Am. Exchg. Bk. vs. Metropolitan Bk., 71 Mo. App. 451.



quire more prompt presentment than do bills. The Uniform Negotiable Instruments Law recognizes in this provision a universal banking custom to handle checks with the utmost dispatch. This provision applies, of course, to the presentment of the check by the holder at the counter of the bank upon which it is drawn as well as when these instruments are collected through other banks, but their collection being peculiarly a function of banks, perhaps it will be interesting to know how checks and the present wonderfully efficient methods of effecting their collection have been evolved from the primitive necessities of the early bankers.

**Early history of banking and the evolution of the check.**

It appears that very early in the history of banking the issue of checks against deposits was unknown, at least in England, from whence so many of our banking customs have been derived. It was the practice then of the goldsmiths, who were the bankers in those early days, to receive deposits of money from their customers and they combined its care with their business of manufacturing gold and silver plate. As an evidence of their indebtedness to their customers for the deposits made with them they gave them certificates against which their customers were permitted to draw. When the customer wished to draw a part of his deposit he was obliged to present his certificate to his banker so that the amount of his withdrawal might be credited upon it. This becoming inconvenient as men used their banking credits in their business, an improvement was evolved by the issue of several receipts in convenient amounts, instead of a single certificate for the whole deposit. Later these were followed, in about the year 1729, by the issue of printed bank notes which in their wording, according to the Hon. Secretary of the London Bankers Clearing House, Mr. Robert Martin

Holland, resembled the notes of the Bank of England of today. Not yet fully meeting the convenient requirements of their customers the bankers began, a few years later, to issue printed checks to be filled in by the customer himself.

**Early method of "clearing" and settling balances.** As the use of checks grew and each banker found himself daily in possession of checks drawn upon other banks which had been left with him for his customers' credit, he was obliged to send out his clerks to collect them at the banks upon which they were drawn. This method of collection being attended with considerable difficulty and involving delay and the danger of loss and robbery, the next development appears to have been an endeavor to facilitate their collection by sending the "walk clerks," as the collectors were called, to meet at one bank one week and another the next to effect exchanges. Again this method proving inconvenient by reason of the increasing number of London bankers, these "walk clerks" formed the practice of meeting at lunch time at the "Five Bells," a public house in Dove Court, Lombard street, near the site of the present London Clearing House. There in the public room, each day after lunch, the exchange of checks was made between the clerks from the different banks and the balances due each were paid in cash. The volume of checks handled at these meetings and the large amount of cash often required to settle the balances, caused the bankers to be alarmed at the attendant risks and they rented a room near this place in which their clerks might meet and make their exchanges and settlements with greater safety.

From time to time convenient regulations were provided to enable the clearing clerks to complete their exchanges with dispatch and later the use of cash in set-

tlements was dispensed with altogether, gains or losses being paid by drafts upon the Bank of England at which all bankers then found it convenient to keep balances for that purpose. In this manner was evolved the wonderful organizations of the Clearing Houses of today by means of which, with instant dispatch, millions of dollars in the aggregate of checks are daily reduced to comparatively small balances and immediately paid.

A description of the methods employed in making the exchanges and settlements at the Clearing Houses would serve no useful purpose here, these being voluntary associations of bankers whose operations are entirely within the control of their members. Compliance with their reasonable regulations for the collection of instruments which pass through their control will, however, effectually relieve the collecting bank from any imputation of negligence in effecting its collections, although no usage of the Clearing Houses will dispense with the performance by the collecting bank of those duties imposed upon it by law. Being voluntary associations, Clearing Houses control the qualifications of their members and frequently restrict their number or limit their membership to National Banks to the exclusion of State Banks and Trust Companies, or private bankers. Non-member banks doing a deposit business are then required to clear their checks through member banks if they would avoid the necessity of presenting them at the counters of the banks upon which they are drawn. They thereby assume a risk not attaching to member banks if checks deposited with them are unduly delayed in presentment because they see fit to present them for payment through clearing banks and, in the absence of permission or assent by their customer to this course of dealing, they are not relieved of liability to him if loss is sustained which is at-

tributable to the delay that may be occasioned by this method of presentment.

Most banks fix a time in the day's business before which checks must be deposited if they are to be collected on the day of deposit. It is usually at or about noon and deposits are all, by custom, received and credited to their customers' accounts subject to their payment by the banks upon which the checks are drawn after presentment through the clearing house. Ordinarily a notice to that effect is printed in the customers' deposit book. All checks received before the clearing hour are to be presented on the day of their deposit and a failure to do so might make the bank liable for any loss due to its negligence. (Sec. 186.) Deposits which are received subsequent to the clearing hour are, however, properly held until the next day's clearing unless they are received with special instructions requiring their immediate presentment at the counter of the drawee bank or unless, in some special cases, as when the bank receiving the deposit has knowledge of the impending insolvency of the drawer of the check or the bank upon which it is drawn, the risk of holding it until the next day, would materially increase, particularly if it can be presented at once without great inconvenience.<sup>21</sup> The depositor may give express instructions as to the manner in which he desires his check or other instrument collected and if the deposit is accepted subject to his instructions, or if it is the custom of the bank to handle the deposits of certain of its customers in particular ways, no deviation will be excused notwithstanding its general usage.<sup>22</sup>

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21. *Pinkney vs. Kanawha Valley Bk.*, 68 W. Va. 254, 9 S. E. 1012, Ann. Cas. 1912 B. 115, 32 L. R. A. N. S. 987.

*First Nat'l Bk. vs. Fourth Nat'l Bk.*, 77 N. Y. 320, 324.

22. *Second Nat'l Bk. vs. Bank of Alma*, 99 Ark. 386, 396, 136 S. W. 472.

*Finch vs. Karste*, 97 Mich. 21, 56 N. W. 123.

*Lord vs. Hingham Nat'l Bk.*, 186 Mass. 161, 71 N. E. 312.



**The medium of payment.** The collecting bank is not authorized to accept in payment of the collection any other means of payment than money and when it does accept the check of the debtor or the paying or remitting bank, it does so at its own risk, in the absence of special authority from its depositor. If it accepts a check or exchange in payment which should prove uncollectible and its failure to obtain proper payment operate to prejudice the owner of the instrument entrusted to it for collection, the bank will nevertheless be liable to him.<sup>23</sup> If it discover the imposition and recover the instrument for which the worthless check or exchange was given in time to take the necessary steps to preserve the liability of the secondary parties to the owner of the instrument no liability will attach to the collecting bank, for, in that event, its mistake will have proven to be quite harmless. This would have to be done in the case of a foreign bill requiring protest, on the very day of its maturity (Sec. 155) and in the case of an ordinary bill or a note before the close of the day after its dishonor. (Secs. 103, 104.)

Having accomplished the collection of the instrument it is the bank's duty to remit the proceeds to its customer or dispose of them in the manner I have already described, and it will not be required to concern itself over any question about the title to the instrument or its proceeds, having fully performed its duty when it pays over the proceeds to its principal.<sup>24</sup>

I stated at the beginning of this brief exposition of the principal rules which govern the duties and liabilities

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23. *Hazlett vs. Connel Bk.*, 132 Pa. St. 118, 19 Atl. 55.  
*Bank vs. Cummings*, 89 Tenn. 609, 620, 18 S. W. 115.  
*Bank vs. Union Trust Co.*, 149 Ill. 343.

24. *Monongahela Nat'l Bk. vs. First Nat'l Bk.*, 226 Pa. St. 270, 276, 75 Atl. 359, 26 L. R. A. N. S. 1098 and note.

**Relation of depositors to sub-agents.** of banks and agents in the collection of commercial paper that the bank which receives the instrument for collection from its customer becomes his agent in its collection. If the collection is effected by the employment by that bank of sub-agents, it must sometimes be determined what relation the sub-agents bear to the owner of the instrument. There appears to be conflict of authority upon this subject based upon conflicting views of the liability of the first bank or any bank in the series through which the collection is made, for the acts of each subsequent sub-agent. Some courts hold that each bank is liable only for its own acts or omissions in the performance of its particular duty in the collection and where this interpretation prevails, each bank in the series is held to be directly liable to the owner of the instrument.<sup>25</sup> Others hold that all are sub-agents of the first bank and each of the one from which it received the instrument, and these cases hold that the bank which receives the instrument in the first instance, from its customer, is liable to him for the acts or omissions of its sub-agents, but they do not deprive the owner of the instrument of his right of action against the sub-agents, if he elects to pursue it against them.<sup>26</sup>

Upon the collection of the instrument the agency relation ceases and the collecting bank becomes the simple

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25. *Wilson vs. Carlinville Nat'l Bk.*, 187 Ill. 222, 58 N. E. 250, 52 L. R. A. 632.

*First Nat'l Bk. Chicago vs. Bank of Whittier*, 221 Ill. 319.

*Sec. Nat'l Bk. vs. Merch. Nat'l Bk.*, 11 Ky. 930, 65 S. W. 4, 98 A. S. R. 439.

*Columbia Sec. Nat'l Bk. vs. Cummings*, 89 Tenn. 609, 18 S. W. 115, 24 A. S. R. 618 and note.

26. *Exchg. Bk. of Pitts. vs. Third Nat'l Bk. of N. Y.*, 112 U. S. 276.

*Baillie vs. Augusta Svgs. Bk.*, 95 Ga. 277, 21 S. E. 717.

*St. Nicholas Bk. vs. Farmer's Nat'l Bk.*, 128 N. Y., 26, 27 N. E. 849.

contract debtor of its customer,<sup>27</sup> unless the collection was undertaken under an agreement by the terms of which the proceeds are to be otherwise held, when, of course, the proceeds will be held under the terms of the trust agreement.

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27. *Commercial Bk. of Penn. vs. Armstrong*, 148 U. S. 50, 13 S. Ct. 533.

*Nor. Car. Corp. Comm. vs. Merch. & Farmer's Bk.*, 137 N. C. 697, 50 S. E. 308, 2 Ann. Cas. 537.

## TITLE IV.

### GENERAL PROVISIONS.

Section		Section	
190	Title of the Act.	193	Reasonable time; what constitutes.
191	Definition and meaning of terms.	194	Time, how computed.
192	Persons "primarily liable on instrument"; secondary parties.	195	Application of Act.
		196	Law Merchant; when governs.

**Title of the Act.** "SEC. 190. THIS ACT SHALL BE KNOWN AS THE NEGOTIABLE INSTRUMENTS LAW."

The title of the Act is omitted in many of the States and is of importance only for citation and reference. The Act is very generally known as the "Uniform Negotiable Instruments Law."

**Definition and meaning of terms.** "SEC. 191. IN THIS ACT, UNLESS THE CONTEXT OTHERWISE REQUIRES:

'ACCEPTANCE' MEANS AN ACCEPTANCE COMPLETED BY DELIVERY OR NOTIFICATION.

'ACTION' INCLUDES COUNTER-CLAIM AND SET-OFF.

'BANK' INCLUDES ANY PERSON OR ASSOCIATION OF PERSONS CARRYING ON THE BUSINESS OF BANKING WHETHER INCORPORATED OR NOT.

'BEARER' MEANS THE PERSON IN POSSESSION OF A BILL OR NOTE WHICH IS PAYABLE TO BEARER.

'BILL' MEANS A BILL OF EXCHANGE, AND 'NOTE' MEANS NEGOTIABLE PROMISSORY NOTE.

'DELIVERY' MEANS TRANSFER OF POSSESSION, ACTUAL OR CONSTRUCTIVE, FROM ONE PERSON TO ANOTHER.

'HOLDER' MEANS THE PAYEE OR INDORSEE OF A BILL OR NOTE, WHO IS IN POSSESSION OF IT, OR THE BEARER THEREOF.

'INDORSEMENT' MEANS AN INDORSEMENT COMPLETED BY DELIVERY.

'INSTRUMENT' MEANS NEGOTIABLE INSTRUMENT.



‘ISSUE’ MEANS THE FIRST DELIVERY OF THE INSTRUMENT, COMPLETE IN FORM, TO A PERSON WHO TAKES IT AS A HOLDER.

‘PERSON’ INCLUDES A BODY OF PERSONS, WHETHER INCORPORATED OR NOT.

‘VALUE’ MEANS VALUABLE CONSIDERATION.

‘WRITTEN’ INCLUDES PRINTED, AND ‘WRITING’ INCLUDES PRINT.”

These definitions seem sufficiently complete to enable any person readily to understand them without further explanation, in view of what has already been said in other places where the terms defined have been employed.

In determining the application of this law, the proper course to pursue is first to examine its language and inquire what is its natural meaning. Reference to the law as it previously stood is unnecessary when the language of the Act is itself plain and explicit and fully covers any situation to be inquired into.

Lord Herchell, commenting judicially on the English Act, has said that it is the duty of courts to give to its language its plain ordinary meaning, uninfluenced by a consideration of how the law previously stood, and our own Act being like the English Act an attempt to embody in code form all the law upon the subject of negotiable instruments, must be interpreted in the same manner. It is the law. Before its simple, plainly expressed terms, all conflicting judicial interpretation of the law merchant cease to be authority.

**Person primarily liable on instrument.** “SEC. 192. “THE PERSON ‘PRIMARILY’ LIABLE ON AN INSTRUMENT IS THE PERSON WHO BY THE TERMS OF THE INSTRUMENT IS ABSOLUTELY REQUIRED TO PAY THE SAME. ALL OTHER PARTIES ARE ‘SECONDARILY’ LIABLE.”

**“Kansas.** It is not difficult to determine who, by the terms of an instrument, is required absolutely to pay it. Upon a promissory note, for example, every person who signs

it upon its face would appear to be the person who primarily promises to pay it, unless he indicates by appropriate words in writing upon the instrument that he does not undertake to pay it in the capacity of maker. The acceptor of a bill of exchange is the person appearing upon the face of an accepted bill to be the one primarily and absolutely required to pay it. But when one draws a bill upon himself, the drawer is then the person absolutely obliged to pay even when unaccepted, since by Section 130 the holder may treat such a bill as the promissory note of the drawer.

**Reasonable time:** "SEC. 193. IN DETERMINING WHAT IS A what constitutes 'REASONABLE TIME' OR AN 'UNREASONABLE  
"So. Dakota. TIME' REGARD IS TO BE HAD TO THE NATURE OF THE INSTRUMENT, THE USAGE OF TRADE OR BUSINESS (IF ANY) WITH RESPECT TO SUCH INSTRUMENTS, AND THE FACTS OF THE PARTICULAR CASE.""

Here is a provision for the observance of which it is impossible to state a general rule. What would be a reasonable or an unreasonable time in respect to one instrument might not be so regarded in respect to another. It seems that the intention of the parties is not at all taken into account, only the nature of the instrument and the usage of a trade or business and the facts of a particular case, unless the last clause of the section is to be regarded as so comprehensive that the intention of the parties in regard to the time the instrument may stop in the course of its negotiation, or may be delayed in its presentation, shall be taken into account as part of the facts of the particular case. Under Sections 7, 53, 71 and 144 much has already been said on this subject and the effect of a failure to negotiate or present an instrument for acceptance or for payment within a reasonable time, has already been pointed out. See these sections.

What usage of a trade or business will excuse prompt presentment of the instrument is also difficult if not impossible to see. One of the elements of a valid custom, one absolutely necessary to give it the force of law, is that it must be reasonable. If a custom which sanctions long delay in the presentment or negotiation of negotiable instruments is relied on to aid in determining whether or not, in contemplation of the provisions and purposes of this Act, the delay is unreasonable, it is very much doubted that such a custom would excuse the delay, and I have little hesitation in saying that it would not.

**Time: how  
computed.**

“SEC. 194. WHERE THE DAY, OR THE LAST DAY, FOR DOING ANY ACT HEREIN REQUIRED OR PERMITTED TO BE DONE FALLS ON SUNDAY, OR ON A HOLIDAY, THE ACT MAY BE DONE ON THE NEXT SUCCEEDING SECULAR OR BUSINESS DAY.”

Section 85 of this Act contains the provision that an instrument falling due on Sunday or a holiday shall be presented for payment on the next succeeding business day. By this section the same provision is applied to any act which the law requires or permits to be done. Broadly then, when the day for doing any act in connection with the acceptance, presentment, payment, protest, or giving notice of the dishonor of a negotiable instrument falls upon a Sunday or a holiday, it may be done upon the next succeeding business day and, to be effective, it must be so done. “Secular day” means worldly or business day as distinguished from that day of each week universally given over to religious worship and which, in this country, is Sunday.

**Application of  
Act.**

“**Arizona.**

**EFFECT HEREOF.”**

“SEC. 195. “THE PROVISIONS OF THIS ACT DO NOT APPLY TO NEGOTIABLE INSTRUMENTS MADE AND DELIVERED PRIOR TO THE TAKING

Negotiable instruments executed before the passage of this Act are not governed by its provisions. The

rights and liabilities of persons who became parties to an instrument made and delivered before the passage of this Act will be enforced and determined by the law as it was upon the date when the instrument was made and delivered and not by this Act. The duties and rights of those who become parties to the instrument by indorsement after the date when the Act has taken effect are likewise governed by the law in effect at the date when the instrument was made.<sup>1</sup>

**Law Merchant:** "SEC. 196. IN ANY CASE NOT PROVIDED FOR when governs. IN THE ACT, THE RULES OF THE LAW MERCHANT SHALL GOVERN."

Therefore, in any case which is provided for in this Act, the rules of the Law Merchant, in conflict with its provisions, do not apply. In the introduction to these papers a brief history of the Law Merchant and of the first recorded use of bills of exchange and promissory notes and a short history of the early codification of the rules of the Law Merchant in respect to them were given. These rules, being embodied in a multitude of judicial decisions, all of which were well known to the Conference at which this Act was prepared, it can with safety be said that the negotiable instruments code contains provision for practically every case which may arise in the multitude of our business transactions involving the use and interpretation of negotiable instruments. In any case, however, for which no provision is made in the Act the authority upon which our disputes are to be settled must still be sought and found in that vast collection of judicial decisions upon the "principles of equity and usages of trade, which general convenience and a common sense of justice have established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world"—the Law Merchant.

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1. Mackintosh vs. Gibbs, 81 N. J. L. 577, 580.  
Gate City Nat'l Bk. vs. Schmidt, 168 Mo. App. 153, 156.



To the class of instruments for the government of which we must yet look to a great extent to the uncoded rules of the Law Merchant and to other statutes, although they possess some of the qualities of negotiability, belong, bills of lading, warehouse receipts and certificates of stock. These are called, for the lack of a better designation, "Quasi-Negotiable," that is, they are negotiable in a certain sense and to a certain degree and I shall next endeavor to explain the most important principles of the laws by which they are governed.

#### QUASI-NEGOTIABLE INSTRUMENTS.

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In the following treatments of the Uniform Bills of Lading Act and the Uniform Warehouse Receipts Act I will use, as freely as possible, the language of these Acts themselves. References will be made to sections of these Acts but the Acts themselves will not be reprinted in this book. To do so would be mere repetition for the reason just stated.

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The laws which govern those instruments which have to some extent the quality of negotiability are not established with such uniformity as is the law on commercial paper but there is every indication that acts prepared by the conference of the Commissioners on Uniformity of State Laws will gradually obtain the approval of all or a very substantial number of the States and that they will be, of course, greatly to be desired. Bills of Lading, Warehouse Receipts and Certificates of Stock are closely allied in modern commercial use to promissory notes and bills of exchange. The first two represent the right of

property and possession in goods, the last an undivided interest in the assets and activities of corporations and the right to receive a proportionate part of their earnings and to participate in a distribution of their assets. Each has been accorded by mercantile custom this characteristic of negotiability; that after negotiation for value to a holder in due course, without notice, it is free from such defenses as are involved in the title of prior owners. It is not possible, however, to state any general rule or theory of the law in respect to all of these instruments for each has an origin and nature of its own different from the others and from other kinds of securities.

#### BILLS OF LADING.

(The references are to sections of the Uniform Bills of Lading Act.)

Bills of Lading, which are transportation receipts for goods shipped, are issued by railroads or other common carriers of freight, and contain an agreement to deliver the goods described to the shipper or consignee or to his order. They are a symbol of the goods which they represent and while the goods yet repose in the custody of the carrier the bill of lading may, as the evidence of their ownership and existence, be the subject of barter and sale.

In form a bill of lading is required to embody within its written or printed terms the date of its issue, the name of the person from whom and the place where the goods have been received, the place to which the goods are to be transported and a statement whether the goods received will be delivered to a specified person (called a "Straight Bill"; "Order Bill.")

Bill), or to his order (known as an "Order Bill"). (Sec. 1.)

It must also contain a description of the goods, or the packages containing them, and be signed by the carrier or its agent. (Sec. 1.) The carrier may insert in the bill any other terms or conditions consistent with its real agreement with the shipper provided they shall not be contrary to law or public policy, and shall in no wise impair its obligation to exercise that degree of care in the transportation of the goods which a reasonably careful man would exercise in regard to similar goods of his own. (Sec. 2.) They have some of the qualities of negotiable instruments. Their principal resemblance to negotiable commercial paper is in the fact that when a bill of lading is issued in which it is stated that the goods it represents are consigned or destined to the order of the person named in the bill, it is transferable by the consignee or his transferee and any subsequent holder acquires the right to the delivery of the goods and to bring an action upon the bill in his own name.

Upon the liability of the carrier and the rights of the holder of a negotiable bill of lading there is extreme conflict of opinion, the courts of many States holding and persistently announcing views directly opposed to those of the courts of other States. For the sake of business convenience and to make uniform the laws of all the States a Bills of Lading Act was prepared by the Conference of Commissioners on the Uniformity of State Laws which is now effective in the following States: Connecticut, Idaho, Illinois, Iowa, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin.

**Conflict  
of  
laws.**

Radical changes in the laws of some States are effected by the Act, particularly in regard to the liability of the carrier when the issue of a bill of lading has been procured without the delivery to the carrier of any or of all of the goods which it describes, and the extent to which it fixes the liability of the carrier to a holder of a bill which has not been taken up and cancelled upon delivery of the goods to the consignee. It will not be possible to include a discussion of this feature of the Act and its effect within this article, it being intended merely to show the nature of these documents and explain some of their features of negotiability.

At the suggestion and upon the recommendation of the Senate Committee on Interstate Commerce that it be enacted, a bill to make applicable to interstate shipments the provisions of the uniform Act prepared by the Conference of the Commissioners on Uniformity of State laws was recently passed by the Congress of the United States. The Act now governs bills of lading issued for interstate shipments, and its speedy adoption by all of the States will, in all probability, be assured. Should the States which have not yet embraced the Act continue to decline to do so, it would appear, from hearings had before the Interstate Commerce Commission, the 99% of all commodities shipped would nevertheless be carried upon bills of lading which will be subject to the provisions of this Act. It would seem reasonably proper then that this analysis of the law upon the subject be confined to the consideration of the Uniform Act.

Negotiable bills issued for the transportation of goods to any place in the United States on the continent of North America, excepting Alaska, may not, under the Uniform Act, be issued in sets. If they are the carrier issuing them

<b>May not be issued in sets; to what countries.</b>	
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will be liable, under that Act, for failure to deliver the goods they describe to anyone who purchases a part of the bill for value in good faith, even if the purchase be made after the delivery of the goods by the carrier to a holder of one of the other parts of the bill. (Sec. 5.)

The negotiation of the bill may be by special indorsement to a specified person or by endorsement in blank.

**Negotiable by indorsement or delivery.** (Sec. 18.) A special endorsement specifies the name of the person to whom or to whose order the goods are to be transferred, while a blank endorsement specifies no endorsee and under it the goods are deliverable to the bearer of the bill. The bill may also be transferred by delivery when accompanied by an express or implied agreement to transfer the title to the goods which it represents. (Sec. 29.) The indorsement of the bill does not make the indorser liable for any failure on the part of the carrier and previous indorsers to fulfill their respective obligations. (Sec. 35.)

But no bill of lading is negotiable unless it expressly states that the goods it represents are destined or consigned to the order of the specified person whom it names. And if the bill contains words of negotiability, that is, if it states that the goods are deliverable to the person named or his order, it is held, upon the best authority, to be negotiable notwithstanding any provision in the bill to the contrary. (Sec. 4.) Its negotiable character is not affected by the fact that it names a person who is to be notified of the arrival of the goods and the fact that it names such a person is not notice to a purchaser of the bill that he has or may have any rights or equities in the goods which it represents. (Sec. 8.)

The carrier, in the absence of some lawful excuse, is obliged to deliver the goods described in the bill upon a **When carrier demand made either by the consignee or bound to deliver by the holder of the bill, if it has been goods.** negotiated, upon his offer to satisfy the carrier's lawful claims against the goods, to surrender the bill properly indorsed and to sign an acknowledgment that the goods have been delivered if requested to do so by the carrier. (Sec. 10.) But a carrier is not obliged to deliver and not justified in delivering the goods to an unpaid seller unless the bill is first surrendered for cancellation. (Sec. 10.)

The carrier is justified in delivering the goods represented by a negotiable bill to the person in whose possession it is if by its terms they are deliverable to him, or if he holds the bill under a special indorsement by the consignee or an indorsement in blank by him or by his mediate or immediate indorsee, or it is transferable by delivery. (Sec. 11.) This is subject to the qualification, however, that the carrier has not, prior to making actual delivery, been requested by or on behalf of a person having a right of property or possession in the goods to withhold such delivery, or had information at the time of delivery that it was to a person not lawfully entitled to their possession. (Sec. 11.) Such a request must have been made or such information given, to be effective, to an officer or agent of the carrier whose actual or apparent duties include the power to act upon it, and it must be made or given in time to enable him to whom it is given to act with reasonable diligence to stop delivery of the goods. (Sec. 11.) But when a negotiable bill has been issued no seller's lien or right of stoppage *in transitu* will affect or defeat the rights of any purchaser for value in good

faith to whom the bill has been negotiated. (Sec. 41.) This is so even if the negotiation has been subsequent to the notice to the carrier of the seller's claim to the goods, or that he claims a lien upon them or claims the right of stoppage *in transitu*. (Sec. 41.)

**Must take up and cancel bill.** Upon delivery of the goods the carrier must take up and cancel the negotiable bill and if he fails to do so he will be liable to any one who in good faith purchases the bill for value, whether the purchaser acquired title to the bill before or after such delivery, and notwithstanding the fact that the goods were delivered to the person entitled to their possession. (Sec. 13.)

**Partial delivery.** If the delivery is of part only of the goods the carrier must either take up and cancel the bill or plainly write upon it a statement that a partial delivery has been made, describing the goods or packages delivered or the part which still remain in its possession. (Sec. 14.) If it fails to do so the carrier will be liable for its failure to deliver all the goods specified in the bill to any one who in good faith and for value purchases the bill, whether he acquires title to it before or after such partial delivery and notwithstanding the delivery was made to the person entitled to their possession. (Sec. 14.)

**Alteration of bill.** If the bill is altered or an erasure or addition is made in it after its issue without the written authority of the carrier, or unless its authority is noted on the bill, the alteration, erasure or addition is void and the bill will be enforceable according to its original effect. (Sec. 15.)

**Lost bill.** If a negotiable bill is lost or destroyed the owner of the goods for which it was issued can only obtain their delivery, without the carrier's

consent, by the aid of a competent court whose order must require him to indemnify the carrier or any person injured by the delivery against liability or loss by reason of the original bill remaining outstanding. (Sec. 16.) Even upon such an order the carrier will not be relieved of liability to a person to whom the negotiable bill has been negotiated for value without notice of the proceedings or the delivery of the goods, but must respond to him, relying for recourse upon its indemnity.

If more than one person claims title to the goods or the carrier has notice that some one other than the person in possession of the bill of lading claims them, it may require all claimants to interplead or may itself bring an action for this purpose. (Sec. 19.)

**Liability of carrier when negotiable bill issued without receipt of goods, or for failure to correspond to description.**

The carrier will be liable to the holder of a negotiable bill who has given value for it, relying in good faith upon its description of the goods which it represents, to the extent of any damage he may suffer by the non-receipt of all or part of the goods or by their failure to correspond to their description in the bill at the time of its issue, even if none of the goods were delivered to the carrier. (Sec. 22.)

The carrier, however, will not be liable for the failure to deliver goods of the kind and quantity described in the bill of lading if they are described in the bill merely by a statement of the marks or labels upon them, or upon the packages in which they are contained. (Sec. 22.) Nor will it be liable if the bill states that the goods are said to be, or the packages are said to contain, goods of a certain kind or quality, or in a certain condition, or if it contains a statement that the condition of the goods or contents of the packages are unknown to the carrier, or words of like purport. (Sec. 22.)



**Exception when "shipper's load and count."** When the goods are loaded by the shipper the carrier may insert in the bill the words "Shipper's load and count," or other words of like import, and, if this statement is true, it will not then be liable for any damages resulting from the improper loading or the misdescription of the goods represented by the bill, or the holder's failure to receive all that are described, unless there has been loss or damage in transit for which it would be responsible if due to some negligence of its own. (Sec. 22.)

**Not required to deliver unless bill surrendered.** The carrier cannot be compelled to deliver the goods described in the bill until it is surrendered or the goods are impounded by a court. (Sec. 23.)  
**Lien for charges.** It has no lien upon the goods except for freight, storage and other charges incidental to the transmission of the very goods described in the bill, unless the bill expressly states for what other charges a lien may be claimed. (Sec. 25.) It is not liable to the holder of the bill of lading for delivery after the goods have been sold to satisfy its lien, or because they have not been claimed, or are perishable, or hazardous, even if the bill is negotiable. (Sec. 26.)

**Title acquired by the transferee.** Every person to whom a negotiable bill of lading has been negotiated acquires whatever title to the goods his transferor had or could convey and such title as the consignee and consignor had or had power to convey to a purchaser in good faith. (Sec. 31.) He also acquires the direct obligation of the carrier to hold the goods for him according to the terms of the bill. (Sec. 31.) If the bill is transferred but not negotiated to the holder, the transferee acquires with the transfer, as against the transferor, the title to the goods subject to the terms of any agreement between them. (Sec. 32.)

To negotiate the bill means to transfer it from one person to another in such a manner as to make the transferee the owner of the property in the goods which it represents. Courts have never been willing to give the bills of lading the same quality or degree of negotiability which is accorded the bills of exchange and notes, in fact, they have expressly denied it. Their principal attributes of negotiability, with the acknowledged limitations upon them, are, however, admitted to be as follows:

**Right to require indorsement.** If the transfer of a negotiable bill is made for value by delivery and its indorsement by the transferor is necessary for negotiation, the transferee may compel the transferor to indorse the bill unless it appears that its indorsement was not intended. (Sec. 33.) The negotiation is regarded as taking effect at the time when the indorsement is actually made and in the interval the title of the transferee is exposed to equitable defenses and adverse claims which may be asserted against the transferor. (Sec. 33.)

**Warranty by indorsement or delivery.** Anyone who negotiates or transfers a bill of lading for value by indorsement or delivery, including one who assigns for value a claim secured by a bill, warrants, unless the contrary is made to appear, that the bill is genuine, that he has a legal right to transfer it and that he has no knowledge of any fact which would impair the validity or value of the bill. (Sec. 34.) He also warrants that he has a right to transfer the title to the goods it represents and he warrants that the goods are merchantable or fit for the particular purpose for which they are intended, provided that these warranties would be implied if the goods themselves had been transferred under a contract between the parties without the bill. (Sec. 34.) In the case of an assignment of a claim secured by a bill, the liability

of the assignor, upon his warranty, will not exceed the amount of the claims to secure which the bill is assigned. (Sec. 34.)

**Indorser not  
liable for  
obligations of  
previous  
indorsers or  
carrier.**

One who indorses a bill of lading is not liable for the failure of the carrier or any previous indorsers to fulfill their obligations (Sec. 35) and if one who holds the bill as security, either as mortgagee of the goods it represents or as pledgee, demands and receives payment of the debt for which it is security he is not deemed to represent or warrant the genuineness of the bill or the quantity or quality of the goods it describes. (Sec. 30.)

**Rights of holder  
without notice of  
fraud, etc.**

The Bills of Lading Act, endeavoring to overcome irreconcilable conflict, provides that if the bill is obtained or negotiated by accident, fraud, duress, in breach of faith, or is wrongfully converted by the holder and afterward negotiated to a subsequent holder in good faith for value and without notice, the title of such subsequent holder is not affected thereby and the validity of the bill not thereby impaired. (Sec. 37.) It provides further that if one continues in possession of a negotiable bill which has been issued by a carrier for goods in his possession and which have been sold, mortgaged or pledged, and he subsequently negotiates the bill to one who in good faith takes it for value, without notice of the previous sale of the goods, the holder will obtain with his purchase of the bill the title to the goods it represents as fully as if the first purchaser of the goods had expressly authorized the subsequent negotiation of the bill. (Sec. 38.)

Neither of these provisions can, however, be stated to be the law generally, for upon both there is a marked division of opinion furnishing the very best reason why

either the rule favored by the Act or that announced by those courts holding the contrary ought to be universally adopted for the sake of uniformity.

**What bill indicates as to ownership of goods.** When a bill is issued which indicates that the goods it represents are deliverable by the carrier to the buyer or his order, or his agent, its issue is deemed to be a transfer of the property in the goods and the right to their possession in the buyer if the bill is delivered to him. (Sec. 39.) But if the bill is retained by the seller or his agent he thereby reserves his right to possession of the goods and if they are deliverable to the seller or his agent, or his own or his agent's order, the seller thereby reserves his ownership of the goods unless, except for the form of the bill, the property would have passed to the buyer upon shipment of the goods. (Sec. 39.) In that event the seller's ownership of the goods will be deemed to be only for the purpose of securing the performance by the buyer of his obligations under his contract with the seller. (Sec. 39.)

**Draft with bill of lading attached.** When the seller of goods draws upon the buyer and transmits the draft together with the bill of lading to the buyer for the purpose of obtaining its acceptance or payment, the buyer is bound to return the bill of lading to the seller if he does not accept or pay the draft. (Sec. 39.) If, however, the bill of lading provides that the goods are deliverable to the buyer or to his order, or if it is indorsed to him or indorsed in blank by the seller consignee, and the buyer fails to return it but negotiates the bill of lading, one who takes it in good faith, for value without notice of its wrongful negotiation, or who purchases the goods without notice of their wrongful sale, will obtain a good title to the bill and the goods, notwithstanding that the seller's



draft which the bill accompanied was not honored. (Sec. 39.)

**What intention  
assumed.**

If the seller of goods draws on the buyer with bill of lading attached, either directly or through a bank or other agency, it is deemed, in the absence of an agreement to the contrary, as follows:

That if the draft is by its terms or legal effect payable on demand or at sight, or not more than three days thereafter, the parties interested are justified in assuming that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill, and it must not be delivered up to the buyer until he pays the draft. If the draft is payable at a time more than three days after demand, sight or presentation, it is deemed that the seller, in the absence of a different express agreement or of instructions, intended to require acceptance but not payment of the draft before the buyer should be entitled to receive or retain the bill of lading. Upon the acceptance of the draft the bill of lading may be delivered to the buyer. (Sec. 40.)

**Duplicate bills.** Duplicate bills are sometimes issued and when more than one negotiable bill is issued by the carrier for the same goods it is required that the word "Duplicate" or some other word or words indicating that the document is not an original, shall be stamped or written plainly upon the face of every one except the first one issued. (Sec. 6.) If the carrier fails to so mark any and every duplicate bill it will be liable for any damage caused by its failure to do so to anyone who purchases as an original a duplicate bill not so marked, even if the purchase be made after the delivery of the goods to the holder of the original bill. (Sec. 6.)

**“Straight Bill” or non-negotiable bill must be so marked.** A bill of lading which is issued by a carrier and which is not intended to be negotiable is called a “Straight Bill” and must have plainly stamped or written upon it by the carrier the word “Non-negotiable” or “Not negotiable”, unless what purports to be the bill is a mere memorandum or acknowledgment of an informal character. (Sec. 7.)

**Penalties for fraud.** In all States provision is made in the laws upon the subject of bills of lading against fraud in their issue, and severe penalties are imposed upon any officer, agent, or servant of a carrier who issues, or aids in issuing, a false or fraudulent bill. Severe penalties are also imposed upon all persons who fraudulently alter or negotiate bills of lading, or procure the transfer of the goods or the bill without title or with intent to defraud, or wrongfully procure the issue of a fraudulent bill by a carrier.

In substance, the foregoing is an analysis of the principal provisions of the Uniform Act upon the subject of bills of lading now in effect in the States I have mentioned and, either by other statute or judicial interpretation of the Law Merchant, in nearly all the others. It will be of advantage to men engaged in business to know the substance of this Act and you will observe that in a great many respects, as, for example, upon the subjects of indorsement and transfer, warranties, and to determine when and under what circumstances a holder acquires title to the bill free from imperfections, the provisions of the Uniform Negotiable Instruments Act bear a close analogy to this one and are useful to a proper understanding of the law upon this subject. References to the former are omitted from this analysis of the Bills of Lading Act but they readily suggest themselves in the

use of terms common to both and I suggest that the reader consult the index freely and refer to the explanations to be found under appropriate sections of the Uniform Negotiable Instruments Act. He must bear in mind, however, that a bill of lading is merely a symbol of the existence en route, in the custody of the carrier, of the merchandise for which it is issued and that such an instrument is not as fully negotiable as is commercial paper representing transactions in money rather than goods, and that, being *quasi* negotiable, bills of lading are not wholly governed by the laws which govern commercial paper and do not possess all of the attributes of negotiable instruments.

When the goods arrive at their destination, unless they are immediately required for sale or consumption, they are usually warehoused. As an evidence of their existence a receipt is issued and I shall next endeavor to explain in what respects and to what extent this receipt is negotiable, and the rights, duties and liabilities of the parties to a warehouse receipt.

### WAREHOUSE RECEIPTS.

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(The references are to sections of the Uniform Warehouse Receipts Act.)

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#### **Warehouse receipts.**

In forty States and in the District of Columbia, being all except Arizona, Georgia, Indiana, Kentucky, Mississippi, New Hampshire, South Carolina and Texas, the Uniform Warehouse Receipts Act, prepared and recommended by the Conference of the Commissioners on the Uniformity of State Laws, is in effect. It was enacted for the pur-

pose of making uniform the laws of all of the States upon this subject and very concisely and clearly states the law which governs the issue and negotiation of receipts for the storage of goods with public warehousemen.

**Definition of  
warehouse  
receipts.**

A warehouse receipt is a written acknowledgment by the warehouseman that he holds certain goods in store for the person to whom it is issued. It may be issued for goods deposited with the warehouseman by their owner and in many States for goods of which he is himself the owner. In the absence of any special agreement imposing other obligations upon the warehouseman, the deposit of goods with him for storage and his issue of a receipt for them establishes his relation to the owner of the goods as that of a bailee and he is bound to exercise ordinary care in keeping them, to afford the owner reasonable opportunities of access to his goods and to deliver them upon the terms of the receipt which he issues as an evidence that they are in his custody.

**Form of  
warehouse  
receipt.**

This receipt is not required to be in any particular form but every warehouse receipt must embody within its written or printed terms the location of the warehouse where the goods are stored, the date of its issue, its consecutive number and a statement whether the goods will be delivered to the bearer, to a specified person or to a specified person or his order. (Sec. 2.)

It must also express the rate of storage charges, contain a description of the goods for which it is issued or the packages in which they are contained and must be signed by the warehouseman or his authorized agent. (Sec. 2.) If the receipt is issued for goods of which the warehouseman is the owner, either solely or jointly or



in common with others, these facts must be stated in the receipt and it must also contain a statement of any advances made, or liability incurred by him toward the goods stored for which he claims a lien. If the precise amount of his advances or liabilities incurred is unknown to the warehouseman, or to his agent, at the time the receipt is issued, his statement upon the receipt that advances have been made or liabilities incurred will be sufficient if he states for what purpose they were made or incurred. (Sec. 2. )

If any of the foregoing requirements are omitted from a negotiable receipt the warehouseman will be liable for all damages caused by their omission. (Sec. 2.) He may insert in his receipt any other terms or conditions which express the terms upon which he receives the goods, provided they shall not be contrary to law or in any wise impair his obligation to exercise that degree of care in the safekeeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Sec. 3.)

**Non-negotiable receipts.**

The receipts which may be issued by the warehouseman may be either non-negotiable or negotiable. One in which it is stated that the goods it describes will be delivered to the depositor, or to any other person, is a non-negotiable receipt. (Sec. 4.) Such a receipt must have plainly written or stamped on its face by the warehouseman issuing it the words: "Non-negotiable" or "Not negotiable," and if he fails to mark it so anyone purchasing it for value, supposing it to be negotiable, may at his option treat it as imposing upon the warehouseman the same obligations as if it had been negotiable, unless what purports to be, or is claimed to be a warehouse receipt is a letter, or memorandum, or other written agreement of an informal character. (Sec. 7.)

**Negotiable  
receipt.**

A negotiable receipt must contain the statement that the goods received will be delivered to the bearer or to the order of any specified person. (Sec. 5.) If such a receipt contains in addition a provision that it is non-negotiable this additional provision is void and notwithstanding it the receipt is deemed to be negotiable. (Sec. 5.)

**Duplicate  
receipt.**

When more than one negotiable receipt is issued by a warehouseman for the same goods the word "Duplicate" must be plainly written or stamped upon every one except the first one issued, and the warehouseman who fails to do so will be liable for any damage or loss suffered by anyone who purchased the subsequent receipt for value, supposing it to be an original, even if he purchased it after the delivery of the goods by the warehouseman to the holder of the original receipt. (Sec. 6.) A receipt upon the face of which the word "duplicate" is plainly placed is considered to be a representation and warranty by the warehouseman that it is an accurate copy of an original receipt properly issued and uncanceled at the date when the duplicate was issued, but it imposes upon him no other liability. (Sec. 15.)

**Warehouseman  
must deliver  
goods to holder  
of receipt.**

In the absence of some lawful excuse the warehouseman is bound to deliver the goods represented by the receipt to its holder or to the depositor of the goods, upon demand. (Sec. 8.) He must require that the demand shall be accompanied by an offer to satisfy his lien for advances and charges, to surrender the receipt, if negotiable, with such indorsements as would be necessary for its negotiation into the possession of the person making the demand, in order to show that he is entitled to delivery of the goods, and that the person making the

demand shall sign an acknowledgment that the goods have been delivered. (Sec. 8.)

**Lien of warehouseman.** If a negotiable receipt is issued for the goods the warehouseman will be entitled to a lien upon them, or their proceeds if sold, only for charges for storage of the goods for which the receipt is issued accruing from the date of the receipt, unless it plainly specifies other charges for which a lien is claimed. (Sec. 30.) In that case the warehouseman will be entitled to a lien upon the goods or their proceeds for the charges enumerated in the receipt if they are lawful charges for the storage and preservation of the goods it describes, for money advanced, interest, insurance, transportation, weighing, coopering and other reasonable charges and expenses in relation to them. (Sec. 27.) He is also entitled to a lien for charges and expenses for notice and advertisements of sale and for the sale of the goods, if default has been made in satisfying his ordinary charges. (Sec. 27.)

A warehouseman having a valid lien against the person demanding the goods may refuse to deliver them to him until his lien is satisfied. (Sec. 31.) He is entitled to all of the remedies provided by any law in favor of a creditor against his debtor for the collection from the depositor of the goods of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay, and is not required to have recourse first or alone to the goods in his possession to collect his claim. (Sec. 32.)

**Loss of lien.** The warehouseman will lose his lien upon the goods by surrendering their possession without first requiring the payment of his lawful claims against them, or by refusing to comply with a lawful demand for their delivery. (Sec. 29.) Such a de-

mand must, of course, be accompanied by an offer to comply with the requirements which I have already stated must be met, before the warehouseman can be compelled to deliver the goods to the depositor or holder of the bill. (Sec. 8.) His lien on the goods will not be revived if they are subsequently redeposited with him.

He may enforce his lien again the goods deposited with him belonging to the debtor for the claims in regard to which the lien is asserted, and may enforce it against goods belonging to other persons deposited at any time by the person who is liable for his claims, provided the person who deposited goods belonging to others had such possession of them that a pledge of them by him at the time of their deposit to one who took the goods in good faith would have been valid. (Sec. 28.)

**Enforcement of lien.**

In order to enforce his lien for a claim which has become due, the warehouseman must give written notice to the person for whose account the goods are held, and to any other person known to have a claim upon or an interest in them. (Sec. 33.) This notice must be given by delivery in person to the one to be notified, or sent by registered letter addressed to his last known place of business or residence. (Sec. 33.)

**Demand; notice of intention to satisfy lien; what must contain.**

The notice must contain an itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due, a brief description of the goods against which the lien exists and a demand that the amount of the claim as stated in the notice, and any additions as shall accrue, must be paid on or before a day mentioned. (Sec. 33.) The time within which payment is required by the notice must not be fixed at less than ten days from the date of the delivery of the notice or the date when it should reach its



destination in due course of post if it is sent by mail. (Sec. 33.) The notice must also contain a statement that unless the claim is paid within the time specified, the goods will be advertised and sold at public auction and the date, time and place of the sale must be specified. (Sec. 33.)

**Auction sale to satisfy lien.** An auction sale may then be held after the time specified in the notice has elapsed, in accordance with the terms of the notice. It must be held in the place where the lien was acquired unless that place is unsuitable, when it must be held at the nearest suitable place. (Sec. 33.) The sale must be advertised by publication once a week for two consecutive weeks in a newspaper published in the place where the goods are to be offered for sale, or if no newspaper is published there, the advertisement must be posted at least ten days before the date when the sale is to be held, in not less than six conspicuous places therein. (Sec. 33.) The advertisement must describe the goods to be sold, state the name of their owner or of the person for whose account they are to be sold and the time and the place of the sale. (Sec. 33.)

If at any time before the goods are so sold any person claiming a right of property or possession in them offers to pay the amount necessary to satisfy the lien and the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of payment, the warehouseman must accept the proffer. He must then deliver the goods to the person making such payment, if he is a person who is entitled to their possession under the provisions of this Act. Otherwise he must retain possession of the unsold portion of the goods according to the terms of the original contract of deposit. (Sec. 33.)

The remedy provided for enforcing his lien does not preclude the warehouseman from resorting to any other means provided by law for the enforcement of a lien against personal property, nor bar his right to recover from his debtor so much of his claim as may remain unsatisfied after the sale of the stored goods. (Sec. 35.)

**Disposal of proceeds of sale.** The proceeds of any sale of the goods must be applied to pay the warehouseman's lien, including the reasonable expenses of the sale, and the balance, if any, held by him and delivered upon demand to the person to whom he would have been justified in delivering the goods. (Sec. 34.) If the goods are separable he may not dispose of more of them than will be necessary to satisfy his lawful claims which have accrued.

**Sale of perishable goods.** If the goods deposited are of a perishable nature or by keeping will deteriorate greatly in value, or if by their odor, inflammability, leakage, or explosive nature will be liable to injure other property, the warehouseman may give such reasonable notice to the owner or the person in whose name they are stored as is possible under the circumstances, requiring him to satisfy his charges and remove the goods from the warehouse within a specified time. (Sec. 34.) If the persons so notified do not comply with the notice, the warehouseman may thereupon proceed to sell the goods at public or private sale without advertisement and if after a reasonable effort to do so, he is unable to sell them, he may proceed to dispose of them in any lawful manner without incurring any liability by reason thereof. (Sec. 34.)

**Obligation to deliver ceases upon sale of goods.**

When the stored goods have been lawfully sold the warehouseman is not thereafter liable for a failure to deliver them

to the depositor or to the holder of the receipt issued for them when they were deposited, even if the receipt is negotiable. (Sec. 36.)

**Proper and improper delivery of goods.** The obligation of the warehouseman to deliver the goods is fulfilled if he delivers them to the person lawfully entitled to their possession or to his agent, or if he delivers the goods to one who is either himself entitled to delivery by the terms of a non-negotiable receipt or who presents written authority from the person so entitled to receive them. (Sec. 9.)

The delivery is also properly made if the warehouseman surrenders the goods to a person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or his order, or bearer, or one which has been indorsed to him or in blank, by the person to whom delivery is promised in the receipt, or by his mediate or immediate indorsee. (Sec. 9.)

But if the warehouseman delivers the goods to one who is not in fact lawfully entitled to their possession or, if before delivering them as described in the immediately preceding paragraph to a person in possession of a negotiable receipt and appearing to be entitled to their possession, he is requested by or on behalf of the person lawfully entitled to a right of property or possession in the goods not to make such delivery; or if he has information that the delivery about to be made is not to one lawfully entitled to their possession, he will not be deemed to have made a proper delivery and will continue to be liable to the real owner of the goods. (Sec. 10.)

**Liability for failure to cancel receipt.** If the warehouseman fails upon delivery of the goods to take up and cancel a negotiable receipt which he has issued for them, he will be liable, notwithstanding their delivery to any one who pur-

chases such receipt in good faith and for value whether he acquired title before or after such delivery and must answer to him for the goods or their value. (Sec. 11.)

One who has lost a negotiable receipt may apply to a court of competent jurisdiction, if the warehouseman **Lost receipt.** will not otherwise accept indemnity and deliver the goods, for an order for their delivery to him and upon satisfactory proof of the loss or destruction of the receipt the court may order that the goods shall be delivered to him upon the execution of a bond with approved sureties to hold the warehouseman harmless from any liability or expense which he or any person injured may thereby sustain, should the original outstanding receipt be presented. The court may also at its discretion order the payment of the warehouseman's reasonable costs and counsel fees. (Sec. 14.) A delivery of the goods even when made under an order of a court, will not relieve the warehouseman of liability to a person to whom the negotiable receipt has been negotiated for value without notice of the proceedings or of their delivery. (Sec. 14.)

The warehouseman will not be excused from delivering the goods described in his receipt, or from liability for refusing to do so, because he claims title **Warehouseman cannot set up title in himself.** to the goods, or the right to their possession, unless he acquired title or the right directly or indirectly from the depositor of the goods at the time of or subsequent to their deposit with him for storage, or by reason of his warehouseman's lien. (Sec. 16.)

If two or more persons claim title to the goods he may require them to bring an action of interpleader to deter-



**Right to interplead adverse claimants to goods.** mine their respective claims or he may himself bring such a suit or set up their adverse claims as a matter of defense in any action brought against him for the recovery of the goods and require them to interplead. (Sec. 17.) He may also refuse delivery if he has information that some one other than the depositor claims an interest in the goods and pending a determination of the rights of the prospective adverse claimants, he will be excused from making delivery during such reasonable time as he may require to investigate their claims or to bring legal proceedings to require them to interplead. (Sec. 18.) But except as has been stated herein, when two or more persons claim under the receipt to own the stored goods, no right or title of a third party, a stranger to the receipt, or to the transaction by which the goods were acquired by the warehouseman, will be a defense to any action brought against the warehouseman by the depositor or the holder of the receipt to recover the stored goods. (Sec. 19.)

Aside from the penalties which are usually prescribed for the issue of a fraudulent receipt, a warehouseman will be liable to the holder of a receipt for damages caused by the non-existence of the goods for which it was issued or by their failure to correspond with their description in the receipt at the time of its issue. (Sec. 20.) But if the goods are described merely by a statement of marks or labels upon them or upon the packages in which they are contained, or if the receipt contains a statement that the goods are *said* to be, or the packages are *said* to contain goods of a certain kind, this statement, if true, will relieve him of liability should they prove to be goods of a different kind or quality from that

indicated by the marks or labels, or different from the kind or quality they were said to be by the depositor. (Sec. 20.) He will be liable, however, for any loss or injury to the goods caused by his failure to exercise such care over them while they are in his charge as a reasonably careful owner of similar goods would exercise and, in the absence of an express agreement to the contrary, that is the limit of his liability in that regard. (Sec. 21.) He has no insurable interest in goods which are not wholly or partly his own and is under no obligation to the depositor to insure them against destruction by fire while in his custody.

A warehouseman must keep the goods of each depositor separate from the goods of others and from his own and **Separation of goods.** other goods of the same depositor for which separate receipts have been issued, to such an extent at least, that they may be at all times accessible to the depositor, easily identified, and capable of separate re-delivery. (Sec. 22.) If he is authorized to do so by agreement or by custom, as when grain or iron is warehoused, he may mingle goods of a kind and grade with other goods of the same kind and grade. (Sec. 23.) In that case the various depositors will own the mingled mass and each will be entitled to withdraw or dispose of such proportion thereof as the amount deposited by him shall bear to the whole. (Sec. 23.) The warehouseman will be liable to each depositor for the care of and re-delivery of his part of the whole mass in the same manner and to the same extent as if the goods had been kept separate. (Sec. 24.)

If the receipt which the warehouseman has issued has been fraudulently altered it shall not excuse him from his **Alteration of receipt.** liability to keep and deliver the goods according to its terms as originally issued,

even to the person who so altered it, but it will excuse him from any other liability to that person or a subsequent holder who took it with notice of the alteration and any purchaser for value without notice acquires only such rights against him as he would have acquired if the receipt had not been altered at the time of his purchase. (Sec. 13.) If the alteration is not a material alteration, or was made without fraudulent intent, it does not excuse the warehouseman from liability upon the receipt, according to its original effect and if authorized he will, of course, be liable according to its altered effect. (Sec. 13.)

The foregoing are, in substance, the principal provisions of the law in respect to the issue of the receipt and the rights and obligations of the warehouseman and of the depositor of the goods and his transferees. The manner of its negotiation and how it obtains those qualities which make it akin to fully negotiable instruments are next provided for.

A negotiable receipt may be negotiated either by delivery or by indorsement; by delivery merely when, by  
**Negotiation of receipt.** the terms of the receipt the warehouseman undertakes to deliver the goods to bearer, or when the receipt, by its terms, declares that the goods are deliverable to a specified person or to his order and he has indorsed it in blank or to bearer (Sec. 37). When the goods are by the terms of the receipt deliverable to bearer or to a specified person, or his order, it is negotiable by indorsement and if a receipt originally requiring indorsement has been indorsed in blank, or to bearer, the holder may indorse the same to himself, or to any other specified person, whereupon it can thereafter be negotiated only by his own indorsement or that of the person to whom the goods become deliverable by his indorsement (Sec. 37). The negotiation may continue by

indorsement in blank, to bearer, or to a specified person indefinitely (Sec. 37). A receipt which is in such form that it cannot be negotiated may be transferred by the holder to a purchaser or as a gift to a donee, but a non-negotiable receipt cannot be negotiated and the indorsement of such a receipt confers no additional right upon the indorsee (Sec. 39).

The negotiation may be by the owner or by the person to whom its possession or custody has been entrusted by

<b>By whom negotiable.</b>	the owner if, by its terms, the warehouseman has agreed to deliver the goods to the order of such person, or if it is at that time in such form that it is negotiable by delivery (Sec. 40).
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The person to whom a negotiable receipt has been negotiated acquires with its transfer whatever title the

<b>Rights of holder.</b>	person from whom he acquired it has in the goods or had the ability to convey to the purchaser in good faith, for value, and the full title and right to the goods which the depositor had to whom it was issued and had the ability to convey to a purchaser in good faith, for value (Sec. 41). He also acquires the direct obligation of the warehouseman to hold the goods for him as fully as though he had originally contracted with him and the right to sue in his own name to enforce his right to the goods (Sec. 41). One to whom a receipt has been transferred but not negotiated, acquires title to the goods subject to the terms of any agreement with his transferor under which the receipt was transferred to him. If the receipt is non-negotiable he may notify the warehouseman of its transfer to him (Sec. 42). Upon giving such notice he thereby obligates the warehouseman to hold the goods for him according to the terms of the receipt (Sec. 42). If he neglect to give notice a subsequent sale of the goods or a lien acquired by any
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creditor of his transferor by attachment or execution upon the goods or other process of law, or by notification to the warehouseman, will have priority over his rights under the receipt and defeat his title and right to acquire the obligation of the warehouseman to hold the goods for him (Sec. 42).

If a negotiable receipt is transferred for value by delivery and the indorsement of the transferor is essential to its valid negotiation, the transferee **Right to require indorsement.** can compel its indorsement by the transferor unless it appear that it was not intended that he should do so. The negotiation is considered as taking effect at the date when the indorsement of the transferor is obtained and in the meantime the rights of the transferee are subject to intervening rights of other persons claiming an interest in or title to the receipt or the goods which it represents (Sec. 43).

One who negotiates or transfers a receipt by indorsement or delivery, whether negotiable or non-negotiable, **Warranty of transferor.** or who assigns for value a claim secured by a receipt, warrants that the receipt is genuine, that he has a legal right to negotiate or transfer it, that he has no knowledge of any fact which would impair its validity or value and that he has a right to transfer the title to the goods which it represents. He also warrants that the goods are merchantable or fit for the purpose for which they are represented, provided such warranties would have been implied if the contract had been to transfer without the receipt the actual goods for which it was issued (Sec. 44).

One who indorses a receipt does not assume liability for any failure on the part of the warehouseman or previous indorsers to fulfil their respective **Liability of indorser.** obligations (Sec. 45). When the receipt

is the subject of a mortgage or a pledge, or is held as security by one who in good faith demands and receives payment of the debt which it secures, the Pledgee or mortgagee. person so receiving payment is not deemed to represent or warrant the genuineness of the receipt or the quantity or quality of the goods it describes and for which it purports to have been issued (Sec. 46).

The validity of any otherwise regular negotiation of the receipt will not be impaired by the fact that its negotiation was a breach of duty on the part of the person negotiating it, or that Negotiation in breach of duty or by mistake, etc. the owner of the receipt was induced by fraud, duress, or mistake to entrust its custody or possession to the person so negotiating it, provided the person to whom it was negotiated, or one to whom it is subsequently negotiated, paid value for it without notice of the breach of duty, fraud, duress or mistake (Sec. 47). If, having pledged, mortgaged or sold goods which are in a warehouse and for which a negotiable receipt has been issued, or having so disposed of the receipt, the person so disposing of the goods or the receipt continues in possession of the receipt, a subsequent sale or other disposition of it by him will convey to a purchaser in good faith, without notice of its previous disposition, or the disposition already made of the goods, as good a title as though the first purchaser had authorized its subsequent disposition (Sec. 48). No right of stoppage *in transitu* or seller's lien will defeat the rights of a purchaser for value of the receipt to whom such receipt has been negotiated, in good faith, before or after notice to the warehouseman of the claim of the seller of the goods to a lien, or to the right of stoppage *in transitu*, and no warehouseman is obliged to deliver the goods to an un-

paid seller or justified in doing so, unless the receipt is first surrendered for cancellation (Sec. 49).

The rules of law and equity, including the law merchant, and particularly the principles and rules of the law of agency govern in the interpretation of the rights and duties of parties to warehouse receipts when they are not in conflict with laws specially enacted for their government. As is the case with bills of lading and other instruments partly negotiable and governed by the law merchant, terms are employed in the law relating to warehouse receipts which you will readily recognize as having already been sufficiently explained in the treatment of the Uniform Negotiable Instruments Law. Consult freely the explanations given there, keeping in mind, however, that although warehouse receipts very frequently accompany bills of exchange and promissory notes as collateral, and partake to a very great extent of many of their features of negotiability, the explanations of terms common to both are to be applied to them within the limits prescribed by the law by which they are governed.

As in the case of bills of lading, you will doubtless have observed a striking similarity between the provisions of the law for the government of warehouse receipts and the law of negotiable instruments upon the subject of transfer, negotiation, warranties, etc.

No special provision is made in this Act upon the subject of forgery, a forged signature or indorsement of a warehouse receipt, as any forged signature, being inoperative and imposing no obligation whatever upon the person whose signature it purports to be.

**Laws applicable to warehouse receipts.**

law of agency govern in the interpretation of the rights and duties of parties to warehouse receipts when they are not in

**Penalties for fraud, etc.**

warehouse receipt, as any forged signature, being inoperative and imposing no

Opportunity for the practice of fraud having developed from the issue of receipts, extreme penalties, heavy fines and imprisonment, are imposed by law upon any one who issues or procures to be issued, or aids in issuing a fraudulent receipt, or one who fraudulently misrepresents the title to the goods stored or, with intent to defraud, disposes of stored goods which are subject to a mortgage lien.



## CERTIFICATES OF STOCK.

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In a very restricted sense, certificates of stock have been accorded by mercantile custom and by statute the quality of negotiability, but some writers contend that to term them *quasi*-negotiable is misleading and confusing. Corporations are creations of statute and in all States the laws which authorize incorporation either provide the manner in which their shares may be transferred or that the company itself may do so in its by-laws or regulations. To such an extent do the statutes of the States vary in their provisions for incorporation that men about to associate themselves in business as a body corporate are offered a variety of more or less attractive corporation laws from which to choose. In one respect, however, they are all very much alike and that is in their provision that shares of stock, when it is not left to the corporation itself to determine the manner in which they may be transferred, are transferrable only upon the books of the company.

If a provision to this effect were not interpreted to mean, as indeed it is in nearly all the States, that this restriction is intended for the protection of the corporation and its stockholder of record, certificates of stock would possess none of the qualities of negotiability. In most States it is either now provided by statute, judicial construction, or as a rule of equity, that a written assignment of the certificate accompanied by delivery vests the legal title to the shares it represents in the transferee, even without a formal transfer on the books of

the corporation.<sup>1</sup> This construction has been adopted for the sake of business convenience and by reason of it stock certificates obtain one of their attributes of negotiability.

**The Uniform  
Stock Transfer  
Act.**

Uniformity in the statute law governing stock transfers is very much to be desired and an Act prepared by the Uniform Laws Commission by which it is hoped to accomplish that result is effective now in twelve States; Connecticut, Illinois, Louisiana, Maryland, Massachusetts, New York, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee and Wisconsin. Its provisions in respect to the transfer of shares are effective, however, in one form or another, in most of the other States so that it may be said to be declaratory of the law as it exists in nearly all. In this explanation of the law on the subject of the transfer of shares I will cite the provisions of that Act whenever it is applicable, using its language as freely as possible and employing the abbreviated title thus, U. S. T. A. Sec. . . . , for reference. In support of those statements of the law upon this subject which, though outside the scope of the Uniform Act, nevertheless are of importance to a general knowledge of the law governing the transfer of shares, I will cite the reader who may desire to pursue the subject more thoroughly to approved decisions by the aid of which a very complete understanding of the law may be obtained.

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1. Johnson vs. Laffin, 103 U. S. 800, 804, 26 U. S. (L. Ed.) 532.  
O'Neil vs. Walcott Min. Co., 174 Fed. 527, 98 C. C. A. 309, 27 L. R. A., N. S. 200.  
Culloden Bk. vs. Forsyth Bk., 120 Ga. 575, 48 S. E. 226, 102 A. S. R. 115.  
Gemmell vs. Davis, 75 Md. 546, 23 Atl. 1032.

**Methods of effecting transfer.** Upon examination of the blank form for transfer which will be found upon the back of every stock certificate it will be observed that it provides for the appointment of someone to act as the attorney or agent of the person in whose name the certificate is issued and gives him authority to transfer the shares on the books of the corporation. It is not necessary that this form alone be used or that it be executed in the negotiation of the certificate, for a transfer of the shares may be procured by a separate power of attorney (U. S. T. A., Sec. 1b), and where shares are used as collateral to a loan or deposited as security for any other purpose a separate power of attorney is usually employed. This is done for the reason that since the immediate transfer of the shares is often not contemplated, it is not at all desirable to have the certificate continue to bear a blank indorsement. There are, then, these two methods of accomplishing the transfer of the shares. In each it is customary upon desiring an actual transfer upon the books of the corporation that the holder of the certificate, or the person authorized to do so by the separate power of attorney, insert in the transfer the name of the person to whom he desires the new stock certificate to issue. He need not designate the name of the person to make the actual transfer on the company's stock register, although a space is provided in the form on the back of the certificate for the insertion of his name. The secretary of the company or its transfer clerk or agent usually inserts his own name and proceeds to make the transfer upon surrender of the certificate.

**Unregistered transfer conveys legal title.**

Pending the actual transfer conflicting claims to the ownership of or an interest in the stock frequently arise. They usu-

ally grow out of claims of creditors of the transferer. In those States in which the Uniform Stock Transfer Act is in effect, and in nearly all others, it is not requisite to the complete ownership of the shares that they must be transferred of record on the company's books, even though its regulations or the certificates themselves, or the law of the State under which the company is incorporated seems to require it. (U. S. T. A., Sec. 1.) Such regulatory provision is intended as a protection to the corporation, its members and its creditors, and not for the creditors of the stockholder.<sup>2</sup> (See note one.)

**Liability of registered owner continues until transfer is registered.** However, in the absence of statutory provision to the contrary, the person whose name is registered on the company's books as the owner of the shares will, as between himself and the company, be held liable for calls and assessments upon the shares<sup>3</sup> and payment by the company to him of dividends will be a bar to a claim to them by the holder of the certificate to whom it has been transferred<sup>4</sup> (U. S. T. A., Sec. 3 b), unless the company have valid, binding notice that the stockholder of record has ceased to be the owner of the shares. An ordinary notice either verbal or in writing that one has acquired the shares of another in the company is usually regarded as sufficient if it is accompanied by an attempt to obtain their transfer upon the company's books.<sup>5</sup> In that case, if the transfer is refused or unduly delayed by the company, the notice and attempt to trans-

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2. Mapleton Bk. vs. Stanrod, 8 Idaho, 740, 71 Pac. 119.  
State Bank'g & Tr. Co. vs. Taylor, 25 S. D. 577, 127 N. W. 590, 29 L. R. A., N. S. 523.
  3. American Alkali Co. vs. Campbell, 113 Fed. 398.
  4. Gemmell vs. Davis, 75 Md. 546, 23 Atl. 1032, 32 A. S. R. 412.  
Brisbane vs. Del. River, etc., Ry. Co., 25 Hun (N. Y.), 438.
  5. Real Est. Tr. Co. vs. Bird, 90 Md. 229, 243, 44 Atl. 1048.  
Guaranty Co. of N. A. vs. E. Rome Town Co., 96 Ga. 511, 23 S. E. 503, 51 A. S. R. 150.



fer has the same effect as an actual transfer as to the company and all except its creditors.<sup>6</sup> As to these, if the vendor has requested the company to make the transfer and honestly believes he has done everything necessary to make the transfer effective that a prudent and careful business man would do, the authorities are in conflict as to whether or not he will be relieved of future liability as a shareholder.<sup>7</sup>

The company too, in the absence of notice, may recognize the exclusive right of the owner registered on its books to vote the shares standing there in his name at the meetings of its stockholders.<sup>8</sup> (U. S. T. A., Sec. 3 a.) And when there is additional liability upon the stock, imposed by statute for the protection of the creditors of the corporation, the stockholder whose name appears of record is not relieved of this liability until the transfer is actually recorded upon the transfer books of the corporation. Even if the corporation has recognized the new holder of the certificates and paid him dividends, or permitted him to vote the shares at its meetings, the shareholder who appears of record to own the shares will continue to be liable to the company's creditors, preserving, of course, his right to reimbursement from his transferee.<sup>9</sup> He can only completely sever his connection with the corporation by insisting upon his right to have his transfer of the shares recorded upon the company's transfer book.<sup>10</sup>

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6. Weber vs. Bullock, 19 Colo. 214.

7. Bracken vs. Nicol, 124 Ky. 628, 99 S. W. 920, 14 Am. Cas. 896, 11 R. A. N. S. 818.

*Contra*, Harpold vs. Stobart, 46 Oh. St. 397, 21 N. E. 637.

8. Royal Cons. Min. Co. vs. Royal Cons. Mines Co., 157 Calif. 737, 757, 110 Pac. 123.

9. Man vs. Boykin, 79 S. C. 1, 60 S. E. 17, 128 A. S. R. 830.

10. Richmond vs. Irons, 121 U. S. 27, 7 S. Ct. 788.  
Visalia, etc., R. R. Co. vs. Hyde, 110 Calif., 632, 636, 43 Pac. 10, 52 Am. S. Rep. 136.

Giesen vs. London, etc., Mfg. Co., 102 Fed. 584, 42 C. C. A. 515.

**Transfer by one having possession of certificates.** Subject to the right to reclaim it which will be afterward explained, the delivery of a certificate is effective to transfer title between the vendor and vendee when it is made by one having possession of the certificate if there is upon it a properly executed assignment, or if it is accompanied by a properly executed document containing a written assignment or power of attorney to sell, assign or transfer the certificate or the shares it represents. (U. S. T. A., Sec. 4.) This is so even if the person delivering the certificate has no right to its possession, is not the person named in the document or power as the one who is authorized to transfer it from its owner, or is not the person who appears to be transferring the title to the certificate. (U. S. T. A., Sec. 5.)

**Effect of indorsement of certificate.** And, subject to the same right, the indorsement of the certificate by the person appearing in it to be its owner is effectual even if the indorser or transferer was induced by fraud, duress or mistake to make the transfer, or if he has already revoked the delivery of the certificate or the authority given by the indorsement or delivery of the certificate, or has died, or become legally incapacitated after having made the indorsement, whether before or after the delivery of the certificate, or received no consideration for it. (U. S. T. A., Sec. 6.)

**Certificate fraudulently procured as above may be reclaimed.** In every such case, however, the possession of the certificate may be reclaimed and its transfer rescinded unless it has been transferred to a purchaser for value, in good faith, without notice of any facts making the transfer wrongful, or unless the injured party has elected to waive the injury, or has been guilty of neglect or

undue delay in endeavoring to enforce his rights.<sup>11</sup> (U. S. T. A., Sec. 7.) The injured person may have the aid of a court of proper jurisdiction to enforce specifically his right to reclaim possession of his certificate from one who so obtained its delivery or to rescind its transfer if the certificate has already been transferred on the company's books, and he may require it to be surrendered according to the court's order to be held impounded pending the determination of his action to reclaim it, or have an order enjoining its further transfer. (U. S. T. A., Sec. 7.)

**Transferee of certificate so procured obtains indefeasible title.** But pending all of these remedies, and even if the transfer of the certificate or the shares which it represents has already been rescinded, or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate, representing part or all of the same shares, a subsequent transfer of such certificate by him, directly or indirectly to a purchaser for value who takes in good faith, without notice of any facts making the transfer wrongful, will give this purchaser and subsequent purchasers a right to the certificate and the shares it represents which nothing and nobody can defeat.<sup>12</sup> In this stock certificates obtain their second important characteristic of negotiability. (U. S. T. A., Sec. 8.) The rule is otherwise, however, when an indorsed certificate has been lost or stolen, as I shall afterward explain.

**Transfer by agent of owner.** The rules of the law of agency apply to the indorsement and transfer of certificates of stock and since the principle upon which that law is based is that one can do by another anything

11. *Dunbar vs. Amer. Tel., etc., Co.*, 224 Ill. 9, 33, 79 N. E. 423, 8 Ann. Cas. 57.

12. *Machinist's Natl. Bank vs. Field*, 126 Mass. 345.  
*Mandelbaum vs. No. Amer. Mining Co.*, 4 Mich. 465.

which he can himself do, the indorsement of the owner's name upon the certificate by one acting under his authority will bind him as effectually as though he had himself made the signature. (U. S. T. A., Sec. 18.) If the signature is unauthorized the doctrine of ratification will apply if by his express acts or conduct, or by implication, the principal brings himself fairly within its operation.<sup>13</sup> And, in that provision of the law under which I have just shown that one taking for value and without notice a certificate duly indorsed by its owner and obtained, or upon which the indorsement was obtained by fraud, duress or mistake, or other unlawful means, and negotiated by one appearing to be in lawful possession of it, obtains an indefeasible title to the shares it represents, his right to the certificate is based upon the doctrine of estoppel which imposes upon one who clothes another with power to do an act not wrong in itself, but wrong only because it violates a trust, as between himself and an innocent party to the transaction, who might otherwise suffer thereby, the duty to bear the loss.<sup>14</sup>

**Purchaser may compel indorsement.** If one who appears to be its owner delivers the certificate with intent to transfer it but without the indorsement necessary to transfer the shares it represents, he may be compelled to execute the necessary transfer unless there is an agreement to the contrary; and the holder entitled to the transfer may invoke the aid of a court to secure it. The transfer, however, will take effect only at the date when it is actually made. (U. S. T. A., Sec. 9.) A valid agreement to transfer may, likewise, be specifically enforced and an attempted transfer without delivery of the

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13. See Note Ann. Cas. 1913 E. 1177.

14. Penn R. Co.'s Appeal, 86 Pa. St. 80.  
Supply Ditch Co. vs. Elliott, 10 Colo. 327, 333, 15 Pac. 691, 3 Am. St. Rep. 586.



certificate is the equivalent of a promise to transfer, the obligation to perform which must be determined by the law governing the formation and performance of contracts. (U. S. T. A., Sec. 10.)

**Warranties by transfer.** One who, for value, transfers a certificate, including one who assigns for value  
**Holder demanding payment not a guarantor.** a claim secured by a certificate, warrants, unless the contrary appears, that the certificate is genuine, that he has a legal right to transfer it and that he has no knowledge of any fact which would impair its validity.<sup>15</sup> (U. S. T. A., Sec. 11.) The liability upon this warranty of one who, holding the certificate as security for a claim, transfers it, will not exceed the amount of the claim to secure which it was pledged, and if one who holds the certificate as mortgagee, pledgee, or as security in any other capacity, demands and receives payment of the debt for which it is security he is not deemed to warrant the genuineness of the certificate or the value of the shares it represents upon transfer of the pledged certificate. (U. S. T. A., Sec. 12.)

**Attachment of certificate; levy when valid.** Certificates of stock, being property, are subject to attachment, the levy of execution or other process of law for the enforcement and collection of debts by which a lien or preference is secured by the creditor invoking its aid against the debtor's interest in the shares which the certificate represents. Unless the certificate is surrendered to the corporation or its transfer enjoined, process of this kind served upon the corporation or anyone in possession of the certificate is not valid or effective if the officer making the levy or serving the attachment has not actually seized physical possession of the certificate. (U. S. T. A., Sec. 13.) An equitable proceeding in the

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15. Note 53 L. R. A. 153, 10 Ann. Cas. 168.

nature of a creditor's bill is provided by law, however, by which the interest of a stockholder debtor may be reached without actual seizure of the certificate, and a creditor whose debtor is the owner of a certificate will be entitled to the aid of the court, by injunction or otherwise, to satisfy his claim by whatever other extraordinary remedies in his favor may be provided by law for his benefit when the certificate or the debtor's interest in it or in the corporation cannot be reached by ordinary process of law. (U. S. T. A., Sec. 14.)

In most States the corporation will have no valid lien upon its shares represented by a certificate which it issues and can impose no restriction upon their transfer by reason of any by-law or otherwise, unless the right to the lien or the restriction upon its transfer is stated upon the certificate. (U. S. T. A., Sec. 15.) You will remember, of course, that such a provision is intended as a protection to the stockholder and the corporation and its creditors and that, as has already been stated, no restriction or by-law of the corporation or provision in its charter or articles of incorporation which provides that the shares represented by the certificate shall be transferable only on the books of the corporation, or registered by a registrar, or transferred by a transfer agent, will make less effective and valid the right to a transfer of the title to a certificate, otherwise complete, to a vendee or pledgee of a stockholder, except in those States where the courts yet hold contrary to the trend of usual authority. And upon compliance with the company's regulations the holder can compel the transfer of the certificate.<sup>16</sup>

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16. *Mundt vs. Comm'l Nat'l Bank*, 35 Utah, 90, 99 P. 454.  
See Note 136 A. S. R. 1023.

**Lost  
certificate.**

A corporation cannot, except where the certificate has been lost or destroyed, be compelled to issue a new one until the old certificate is surrendered to it. Where a certificate has been lost or destroyed a court of competent jurisdiction may order the issue of a new one upon notice to the corporation of the application therefor and reasonable notice to all interested persons by publication or in any other manner in which the court may direct notice of the application to be given. (U. S. T. A., Sec. 17.) Upon satisfactory proof of the loss or destruction of the certificate and upon giving bond with sufficient sureties to be approved by the court, conditioned to protect the corporation or any person injured from any liability or loss by the issue of the new certificate, or expense which it or they may incur by reason of the original certificate remaining outstanding, the court will usually order the new certificate to be issued. (U. S. T. A., Sec. 17.) The court may also, in its discretion, order the payment of the corporation's reasonable costs and counsel fees. (U. S. T. A., Sec. 17.) The issue of a new certificate under an order of a court will not relieve the corporation from liability in damages to a person to whom the original certificate has been before, or shall be thereafter transferred for value, without notice of the proceedings or of the issue of the new certificate. (U. S. T. A., Sec. 17.)

**Transfer by  
infant or person  
wanting in  
capacity.**

The transfer of shares by or to a person wanting in full legal capacity, or their purchase or sale by an infant, like any other contract made during disability by minority or incapacity except one by which the infant supplies himself with necessities, is voidable by him upon attaining full age or when the disability is removed. His repudiation must be prompt upon attaining his ma-

jority or the removal of the disability, or a ratification will be presumed. The corporation may not refuse to register the transfer of shares by a minor if at the time of application for transfer it has had no notice of repudiation by him.<sup>17</sup>

**Transfer by  
guardians,  
executors or  
administrators.**

The power of guardians, executors, administrators, trustees or persons occupying other fiduciary relations toward the owners of shares, to dispose of them is not usually regulated by statute and as a rule they have power to transfer title without having first obtained express authority to do so from the court which controls their appointment and the administration of the estates which they serve. It is incumbent, however, upon one who would acquire title from or through an executor, administrator, guardian, trustee or other fiduciary to carefully scrutinize his authority to sell and most desirable that he do so. I will presently explain this more fully.

**Alteration of  
certificates.**

Certificates of stock are not affected by alteration whether fraudulently made or not, and the owner of the altered certificate is not thereby deprived of his title to the shares of which it is the evidence. The transfer of an altered certificate will convey to the transferee a good title to the certificate and to the shares originally represented by it. (U. S. T. A., Sec. 16.)

**Pledge of  
stock.**

When a debtor delivers stock to his creditor to be held by him as security for the payment of his debt it is a pledge. The immediate transfer of the certificate is not then contemplated, for the debtor expects to discharge his obligation to his creditor and reclaim the shares. It is made by the delivery of

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17. Smith vs. Nashville, etc., R. Co., 91 Tenn. 221, 18 S. W. 546.



the certificate indorsed in blank or, more usually, the certificate unindorsed is accompanied by the power of attorney previously described, and a description of the certificate and a statement of the fact that is pledged as security is incorporated in the memorandum, agreement, or promissory note which is the evidence of the debt.

**Pledgee may have transfer of certificate.**

The pledgee has the right, however, to surrender the certificate to the corporation for transfer and obtain a new one in his own name or in the name of another, but if he does, he will assume all the liabilities of a stockholder unless there is statutory provision to the contrary.<sup>18</sup>

It is held in some States that the pledgee has not the right to transfer the shares before the maturity of the debt which they secure<sup>19</sup> but where a transfer is permitted it is proper for the corporation, if it have notice that the stock is held by the transferee merely as a pledge, to describe the person to whom the new certificate is issued as "pledgee" or to insert in the certificate after his name a statement that it is held as collateral, and if this is done the pledgee will not ordinarily be liable as a stockholder.<sup>20</sup>

**Pledgee may collect dividends.**

The pledgee will then, after its transfer, be entitled to receive dividends on the shares during the continuance of the pledge of which he must, of course, account to the pledgor by proper

18. See notes 10 Ann. Cas. 783, 19 L. R. A., N. S. 249.

Pullman vs. Upton, 96 U. S. 328, 24 U. S. (L. Ed.), 818.

Tierney vs. Ledden, 143 Ia. 286, 121 N. W. 1056, 21 Ann. Cas. 105 and Note.

Marshall Field & Co. vs. Evans, Johnson, Sloan & Co., 106 Minn. 85, 118 N. W. 55, 19 L. R. A., N. S. 249 and Note.

19. Spreckles vs. Nevada Bank, 113 Calif. 272, 45 Pac. 329, 54 A. S. R. 348, 33 L. R. A. 459.

State vs. Smith, 15 Oregon, 98, 14 Pac. 814.

20. Pauly vs. State L. & T. Co., 165 U. S. 606, 17 U. S. S. C. 465.

credit upon his debt.<sup>21</sup> Even if he has not secured a transfer of the stock from the name of its registered owner the pledgee may, by giving notice of the pledge to the corporation, require it to pay the dividends to him.<sup>22</sup>

**Pledgee may  
vote pledged  
shares.**

If he secures the transfer of the certificate to himself the pledgee may vote the pledged shares unless the right to vote is reserved by the pledgor,<sup>23</sup> and when his interests or the interests of the corporation are materially affected by the manner in which the shares may be voted, the owner of the shares, the pledgor, may require that the pledgee vote them in accordance with his directions and, if necessary, he may invoke the aid of a court of equity to require him to do so or to obtain authority to vote them himself.<sup>24</sup>

**Pledge must be  
retained.**

The pledgee must retain the stock during the continuance of the pledge. He need not retain actual physical possession of the identical certificates pledged to him, since one share is the equivalent of another, but he must have in his possession always the number of shares pledged.<sup>25</sup> He cannot separate the pledge from the debt, or lawfully sell or repledge

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21. Guaranty Co. of N. A. vs. East Rome Town Co., 96 Ga. 511, 23 S. E. 505.

Gemmell & Sinclair vs. Davis & Co., 75 Md. 546.

22. Guaranty Co. of N. A. vs. East Rome Town Co., 96 Ga. 511, 23 S. E. 503.

23. Comm. vs. Dalzell, 152 Pa. 217, 25 Atl. 535, 35 Am. St. Rep. 640.

Franklin Bk. vs. Commercial Bk., 36 Oh. St. 351, 355.

24. In re Argus Printing Co., 1 N. D. 434, 48 N. W. 347.

Hoppin vs. Buffum, 9 R. I. 513. 11 Am. Rep. 291.

Notes in 121 A. S. R. 196; Ann. Cas. 1912 A. 207.

Wentworth Co. vs. French, 176 Mass. 442, 57 N. E. 789.

25. Atkins vs. Gamble, 42 Calif. 86, 101; 10 Am. Rep. 282.

Berlin vs. Eddy, 33 Mo. 426.

the shares during the continuance of the pledge to any one with notice.<sup>26</sup>

**Pledge may be assigned.** He may, however, assign the principal debt and the pledge with it, provided always that he do it in such a manner that the pledgor will not be deprived of his right to redeem. If he does re-pledge the shares one who takes the certificates, if they have been indorsed, from the pledgee without notice of the pledge will be fully protected.<sup>27</sup> In that case the owner of the shares can recover them only upon paying the re-pledgee the amount of his advancement on the stock even if this exceeds the amount for which the shares were originally pledged.<sup>28</sup>

**Pledge by executor, etc.** An executor or administrator has the power to pledge stock belonging to the estate which he represents but one taking from an executor or administrator for his own debt a pledge of stock which belongs to the estate he represents will acquire no right to hold it even if he has secured a transfer of the shares upon the company's books. A trustee, however, has no implied power to pledge shares held in trust and even if the instrument creating the trust grants the power to sell, no power to pledge is thereby implied.<sup>29</sup>

**Pledgee's remedies when debt is not paid.** Upon maturity of the debt, if it is not paid, the pledgee may proceed to sell the shares pledged to secure it. He may

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26. *Lawrence vs. Maxwell*, 53 N. Y. 19.  
*Dykers vs. Allen*, 7 Hill (N. Y.), 497, 42 Ann. Dec. 87.  
*Van Eaman vs. Stanchfield*, 13 Minn. 75.  
*Easton vs. Hodges*, 18 Fed. 677, 683.
  27. *Wood's Appeal*, 92 Pa. St. 379, 37 Am. Rep. 694.  
*Coit vs. Humbert*, 5 Calif. 260, 63 Am. Dec. 128.
  28. *Wood's Appeal*, 92 Pa. St. 379, 37 Am. Rep. 694.  
*Shattuck vs. Am. Cement Co.*, 205 Pa. St. 197, 54 Atl. 785,  
 97 A. S. R. 735.  
*McNeil vs. Tenth Nat'l Bank*, 46 N. Y. 325, 7 Am. Rep. 341.
  29. *Patterson First Nat'l Bank vs. Nat'l Broadway Bk.*, 156 N. Y.  
 459, 51 N. E. 398, 42 L. R. A. 139.

either proceed in equity to foreclose his lien and sell the pledge<sup>30</sup> or he may give notice to the pledgor of his intention to sell the shares and proceed to sell without any judicial proceedings.<sup>31</sup> The latter course is usually pursued but the pledgee need not do either and if he does not, and the value of the securities pledged declines, he is not liable to their owner by reason of their depreciation. His third remedy is to proceed upon the debt as a creditor of the pledgor and when it is reduced to judgment he may cause the pledge to be sold upon execution or attachment and apply the proceeds to the satisfaction of his claim.<sup>32</sup>

**Pledgor entitled to notice of sale.** If he determines to pursue the second method and sell the pledge without proceedings in a court, the pledgee must give the pledgor personal notice of his intention to sell and of the time and place at which the pledge will be sold and the manner in which it will be offered. It must be offered at public sale unless a private sale is expressly authorized by the pledgor. By an express agreement the pledgor may waive notice of the sale. Except by express agreement the sale may not be made upon any stock exchange at which the right to bid is limited to its members.<sup>33</sup>

**Pledgee may not buy at his own sale.** In the absence of express authority from the pledgor the pledgee may not

purchase the shares at his own sale under this form of procedure to sell the pledge. This rule is based upon the principle that to permit the pledgee to do so would afford him an opportunity to use his position to his own advantage by so conducting the sale that he might be enabled to purchase the shares at a price

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30. Note, 121 A. S. R. 205.

31. Note in 121 A. S. R. 200.

32. Note 121 A. S. R. 204.

33. Brass vs. Worth, 40 Barb. (N. Y.) 648, 654.



below their real value.<sup>34</sup> Such a sale will be very carefully scrutinized and though the purchase, either directly or indirectly, by the pledgee at his own sale is not void, it is voidable by the pledgor.<sup>35</sup>

**The risk in purchasing stock.** The subject which I have been endeavoring to explain is almost inexhaustible by reason of the varied complications which may arise in the transfer of certificates of stock and by reason of conflicting laws and decisions interpreting their application, but those essentials to a valid negotiation which men purchasing and selling validly issued stocks, or dealing in them as pledges, ought to know, can be briefly discussed as follows:

**Purchase from partners.** One of two or more joint owners cannot sell or pledge stock standing in their joint names, in the absence of express authority of the others; but one partner in a trading co-partnership, including one formed for trading in stocks, can sell or pledge stock appearing to be in the partnership name. The contrary is the rule when the partners are associated together in a non-trading co-partnership.<sup>36</sup>

**Purchase from officer or director of corporation.** A director or officer of a corporation may deal in its stock and information or knowledge of its value which he has by reason of his familiarity with the affairs of the company he represents will not affect the validity of the transaction; and if he makes no misrepresentation to or does not actively mislead the person from whom he buys, or to whom he sells, the transaction cannot be attacked for fraud even though he may gain some advantage by reason of his superior knowledge or position.<sup>37</sup>

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34. Note 121 A. S. R. 203.

35. Note 121 A. S. R. 203.

36. *Moynahan vs. Prentiss*, 10 Colo. App. 295, 51 Pac. 94.

37. *Crowell vs. Jackson*, 53 N. J. L. 656.

*Krumbhaar vs. Griffiths*, 151 Pa. St. 223.

One who purchases stock at a sale by Purchase at sheriff, assignee or bankrupt sale. the sheriff under execution or attachment, or purchases at an assignee's sale, or a sale in bankruptcy, is exposed to the risk that the legal title to the shares may be in another unless the certificates themselves are produced at the sale. I have pointed out previously that it is under such circumstances and at such sales that the conflict between claimants to shares which have been sold or pledged but not transferred on the records of the company usually occur. Since most courts now hold that shares are not held under attachment or execution by the sheriff unless he seize actual physical possession of the certificates, or the laws of most States so provide, (U. S. T. A., Sec. 13) much of the danger of purchasing at such sales has been eliminated. An assignee or trustee in bankruptcy can convey a good title if he delivers the certificates to the purchaser at his sale but there is risk, if the certificates are not in his possession, that they may have been already pledged or sold by the assignor or bankrupt to another who would take a better title than the purchaser at such a sale. (U. S. T. A., Sec. 4.)

The sale of pledged stock by the pledgee Purchase from pledgee or taking repledge. conveys a good title to a *bona fide* purchaser for value, free from the claims of the pledgor and of creditors even if the transfer to the pledgee is not recorded on the company's books.<sup>38</sup> But if the purchaser knows that the stock he purchases is held by his vendor merely as a pledge he will not be a *bona fide* purchaser, unless he purchases at a sale made to satisfy the conditions of the pledge.<sup>39</sup> If one take

38. Coit vs. Humbert, 5 Calif. 260, 63 Ann. Dec. 128.

McNeil vs. Tenth Nat. Bank, 46 N. Y. 325.

Westinghouse vs. German, etc., Bank, 196 Pa. St. 249.

39. Westinghouse vs. German, etc., Bank, 188 Pa. St. 630.

Ryman vs. Gerlach, 153 Pa. St. 197.

from another as a pledge stock which he knows has been pledged to him by its owner he will not obtain its legal title but will hold it subject to the right of its owner to reclaim it.<sup>40</sup> The right to reclaim the stock exists in its owner in either of these cases if he could originally reclaim it from the one to whom he pledged it. However, the owner would be obliged to pay the repledgee or the purchaser from the original pledgee, purchasing with knowledge of the pledge, the amount of his obligation upon the original pledge before becoming entitled to reclaim the shares.<sup>41</sup> The rules which govern the transfer of stock as they are given in this treatment of the subject are all applicable to its transfer by one who holds it in pledge but one dealing with an agent or trustee knowing him to be employed to sell shares belonging to another cannot lawfully accept such shares in pledge from him, although a sale by the agent would convey the title.<sup>42</sup>

**Purchase from  
executor or  
administrator.**

One of the first duties of an executor or administrator of a deceased person's estate is to convert the personal property in his charge into money. He therefore has a right to sell shares of stock belonging to the estate which he has been appointed to administer. The laws governing the administration of estates provide in what manner the personal property in the hands of the executor administrator must or may be sold and although it is asserted, and rightly, except where it may be otherwise provided by statute, that an order of court is unnecessary to empower an administrator or executor to sell shares be-

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40. *German Sav. Bk. vs. Renshaw*, 78 Md. 475.

41. *Chamberlain vs. Greenleaf*, 4 Abb. N. Cas. 178, 182.

42. *Patterson First Nat'l Bank vs. Nat'l Broadway Bk.*, 156 N. Y. 459, 51 N. E. 398, 42 L. R. A. 139.

*Loring vs. Brodie*, 134 Mass. 453.

longing to his decedent's estate,<sup>43</sup> the purchaser will exercise a wise precaution to insist that such authority shall be obtained and that he be provided with a certified copy of the order and the letters of appointment of the executor or administrator, in order to facilitate the transfer of the shares upon the books of the corporation.

**Purchase from Guardian.** The duties of guardians in respect to the sale of shares belonging to their wards and their right to sell and transfer the certificates which they hold in a representative capacity is likewise regulated by statute. As in the case of executors and administrators one purchasing from a guardian, to be fully protected and to assist in protecting the interests of the estate, ought, as a rule, to accept a transfer only when the sale has been made after proper authorization by the court which controls the administration of the estate which he serves, and to require the production of the order under which the sale is directed and a certified copy of the appointment, although there is ample and good authority to support the right of a guardian to sell without it.<sup>44</sup>

**Purchase from trustee.** One purchasing from a trustee stock which he knows the vendor holds as a part of the trust estate is obliged to ascertain whether the trustee is given power to sell by the instrument creating the trust.<sup>45</sup> In the absence of knowledge or notice that the stock offered is trust estate stock the buyer will, however, be regarded as a *bona fide* purchaser and entitled to its

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43. See Note 45 L. R. A., N. S. 1079.  
Leitch vs. Wells, 48 N. Y. 585.  
Prall vs. Tilt, 27 N. J. Eq. 393.  
Wood's Appeal, 92 Pa. St. 379.

44. Lamar vs. Micou, 112 U. S. 452, 475.  
Bank of Virginia vs. Craig, 6 Leigh (Va.), 399, 432. {  
Gardner vs. Beacon Trust Co., 190 Mass., 27. }

45. Patterson First Nat. Bk. vs. Broadway Bk., 156 N. Y. 499.



transfer.<sup>46</sup> Notice is actual knowledge of or a duty to know any facts which would cause an ordinarily prudent and intelligent man to make inquiry to learn whether the stock belongs to a trust estate, and to learn whether a power to sell is granted by the instrument creating the trust. The fact that the certificate is made out in the name of a person as "trustee," or if other words are used which indicate an ownership in a trust capacity, will be regarded as notice.<sup>47</sup> If there is more than one trustee all must sign the transfer and, as a rule, the corporation will require that the instrument creating the trust shall be exhibited. It ought to, for its own protection.<sup>48</sup>

**Purchase of lost  
or stolen cer-  
tificates.**

One purchasing lost or stolen certificates acquires no right to their transfer if they are unindorsed, and even if they are indorsed in blank; nor does any one who purchases from or acquires through him these identical certificates.<sup>49</sup> (U. S. T. A., Sec. 7.)

In this respect certificates of stock lack one of the most marked qualities of negotiable paper for, under similar circumstances, anyone taking for value and without notice a bill, note or check, complete in every other respect except delivery, would own and could enforce it. But, you see, that quality of negotiability is not imparted to certificates of stock and no purchaser, even for value without notice, could acquire title to the lost or stolen certificate. However, if one has procured the transfer of a certificate which, bearing a blank indorsement, had been

46. Hughes vs. Drovers, etc., Bk. (Md.), 38 Atl. 936.

47. See Notes 45 L. R. A. (N. S.) 1078; 15 L. R. A. 643.  
Gevser-Marion Gold Min. Co. vs. Stark, 106 Fed. 558, 45 C. C.  
A. 467, 53 L. R. A. 684.  
Marbury vs. Ehlen, 72 Md. 206, 19 Atl. 648, 20 A. S. R. 467.

48. Bayard vs. Farmers, etc., Bk., 52 Pa. St. 232.

49. East Birmingham Land Co. vs. Dennis, 85 Ala. 565.  
Knox vs. Eden Mus., etc., Co., 148 N. Y. 441.

lost or stolen, and receives a new certificate in its place, whether he be the finder or thief, or some one who purchased from the finder or thief, and transfers this new certificate for value to a *bona fide* transferee without notice of the manner in which it was obtained, his transferee and subsequent transferees acquire the legal and indefeasible title to the shares represented in the new certificate.<sup>50</sup> (U. S. T. A., Sec. 8.)

Since, as you have observed, the holder of certificates which have been assigned to him or to another whom he represents, and the transferer likewise, has the right to require the corporation to transfer the shares upon its books, some inquiry seems fitting into the duty of the corporation to make the transfer and to determine what are the rights of the company in respect to the changes in its membership by the barter and sale of its shares.

The corporation may refuse transfer except upon compliance with its rules for transfer, unless these are contrary to law, but it cannot justify a refusal to make the transfer on the ground that it has been requested to refuse transfer by a former owner of the shares.<sup>51</sup> Unless its charter or the statutes under which it is incorporated give it that right, the corporation may not refuse transfer for the reason that a part of the subscription price remains unpaid or that a call for an assessment or part of the subscription is due and has been made upon the shares and the payment called remains unpaid.<sup>52</sup> The transferer remains

50. *Machinists Nat. Bk. vs. Field*, 126 Mass. 345.

*Mandelbaum vs. North Am. Min. Co.*, 4 Mich. 465.

51. *O'Neil vs. Wolcott Min. Co.*, 174 Fed. 527, 98 C. C. A. 309, 27 L. R. A., N. S. 200 and Note.

*Bond vs. Mt. Hope Iron Co.*, 99 Mass. 505, 97 Am. Dec. 49.

*Mundt vs. Commercial Nat. Bk.*, 35 Utah 90, 99 Pac. 454, 136 A. S. R. 1023.

52. *Craig vs. Hesperia Land Etc. Co.*, 113 Cal. 7, 45 Pac. 10, 54 A. S. R. 316, 35 L. R. A. 306

liable for payments called before the transfer but is not, as a rule, liable upon those called afterward. The corporation may refuse transfer of its shares if, on the eve of insolvency, a shareholder presents his shares for transfer with a view to escape liability to its creditors, and may refuse transfer to protect itself from fraud.<sup>53</sup>

It may also refuse transfer to or by infants or persons under other legal disability unless made in the name of the duly appointed guardian, and may require the application for transfer to be accompanied by a certified copy of the guardian's appointment, but a sale by a minor not being void but voidable only, it has also been held that the corporation must make the transfer upon an assignment of shares by an infant unless at the date of the application it had already been repudiated by him.<sup>54</sup>

Similarly, transfers by executors or administrators may be refused by the corporation unless accompanied by a certified copy of appointment. The transfer of the shares from the deceased owner may be made to the executor or administrator as such, or it may be made directly to one who has purchased from him when his qualification is shown. The corporation is not required to look into the necessity to sell the shares in order to pay the debts of the decedent's estate<sup>55</sup> nor to look to the application to be made by the executor or administrator of the proceeds of their sale.<sup>56</sup> It cannot require the pro-

**Transfers to or by infants or persons under disability.**

**Transfers by executors, administrators and guardians.**

53. Note, 136 A. S. R. 1030, 1031, 1033.

54. *Smith vs. Nashville Etc. R. R. Co.*, 91 Tenn. 221, 18 S. W. 546.

55. *Bayard vs. Farmers Bk.*, 52 Pa. St. 232.  
*Peck vs. Providence Gas Co.*, 17 R. I. 275.

56. *Hutchins vs. State Bank*, 12 Mete. (Mass.) 421.  
*Leitch vs. Wells*, 48 N. Y. 585.

duction of the order to sell, for none is required. But if the corporation have actual knowledge through its officers, that a breach of trust or misuse of the stock or its proceeds is contemplated by the executor or administrator it is its duty to refuse the transfer. If it nevertheless permit the transfer it will be liable to the estate for any loss it may sustain.<sup>57</sup> If the executor apply for transfer of stock which the corporation knows has been specifically bequeathed it must allow the transfer, since the proceeds of the shares might be required to pay the decedent's debts. However, such knowledge might very well be regarded as sufficient justification to require the production of an order of court for the sale or transfer of the shares and to excite the inquisitorial activities sometimes required of the corporation to investigate the authority to transfer when the rights of claimants seem to conflict, and would authorize the corporation to delay transfer for such reasonable time as it may require to determine its duty in the matter. The foregoing applies equally to sales by guardians who, however, more frequently than do executors and administrators, obtain and present authority of court for the sale of shares which they hold for their wards.<sup>58</sup>

It is the duty of the corporation to refuse transfer by a trustee unless it knows that the transfer is authorized

<b>Transfer by trustees.</b>	by the instrument creating the trust and has been executed by all the trustees whose signatures it requires. <sup>59</sup> If it permit the transfer of trust stock by one who has no right to make it or whose right is not complete, the corporation will be liable to the
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57. *Lowry vs. Commercial & Farmers Bank*, 15 Fed. Cas. No. 8581.

*Stewart vs. Fireman's Ins. Co.*, 53 Md. 564. 576.

58. *Gardner vs. Beacon Trust Co.*, 190 Mass. 27.

59. Note, 15 L. R. A. 643, 45 L. R. A., N. S. 1078, Ann. Cas. 1913, E. 1175



trust estate and may be compelled to replace the stock or respond in damages when the transfer has been made by the trustee in breach of his trust, and its negligence is the cause of any loss sustained by the person for whose benefit the shares are held in trust.<sup>60</sup> It should, therefore, require always that the certificates presented for transfer be accompanied by the instrument creating the trust or that it be exhibited to the transfer officer.<sup>61</sup>

It is negligence on the part of the corporation to allow a transfer without a surrender of the certificate for  
 Corporation the shares properly indorsed or accom-  
 must require panied by proper authority to make the  
 surrender of transfer. If this breach of its duty result  
 certificate. in damage to one who is a *bona fide* holder of the old certificate it will be liable to him and obliged to respond to him for his loss.<sup>62</sup> Even if a new certificate has been issued under an order duly made by a court after a *bona fide* contest by the corporation, to replace one which has been lost or stolen, the corporation is not relieved of liability to the holder of the old certificate. Its interests and those of a subsequent *bona fide* purchaser of the lost or stolen certificate are usually protected by a bond of indemnity ordinarily required by the court to be given by the person who invokes its aid to obtain a new certificate in place of one which has been lost. (U. S. T. A., Sec. 17.) And if one fraudulently procures the issue of a new certificate, dishonestly claiming to have lost or destroyed the old one which it replaces, when in fact he has sold

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60. Note, 45 L. R. A. N. S. 1079.

Citizens Bk. vs. Robbins, 128 Ind. 449, 26 N. E. 116.

Marbury vs. Ehlen, 72 Md. 206, 19 Atl. 648.

Wooten vs. Wilmington & W. R. Co., 128 N. C. 119; 38 S. E. 298.

61. Bayard vs. Farmers, etc., Bank, 52 Pa. St. 232.

62. Factors Ins. Co. vs. Marine, etc., Co., 31 La. Ann. 149.

Supply Ditch Co. vs. Elliot, 10 Colo., 327, 15 Pac. 691, 3 Am. St. Rep. 166, 11 L. R. A. 125.

it, the owner of the old certificate, if he is without notice of the proceedings, is then entitled to the transfer to him of the shares which he holds and the corporation is required to look to the bond for its indemnity.<sup>63</sup>

A court's decree in an action wherein it has the power to order the issue of a new certificate or the cancellation

**Transfer by order of court in other cases.** of one issued by the corporation, must, of course, be obeyed. Ordinarily a court will not enter a decree by which the cor-

poration may be exposed to the danger of loss or injury without providing at the same time for its adequate indemnity. Where there are rival claimants to a certificate the laws of all states provide that the corporation, if it is unable to determine to whom the certificate ought to be issued, or by whom it ought to be transferred, may invoke the aid of a court in an action of interpleader and require the claimants to submit their contention to the court for adjudication if there is a reasonable doubt as to which one is entitled to the shares. A corporation which undertakes to determine the rights of rival claimants without interpleader voluntarily assumes a responsibility it is not required to take. If by a mistaken conclusion or opinion of the law its disposition of the rights of the contending claimants to the shares is not sustainable in law, one who is thereby injuriously affected may compel it to respond in damages.

A forged signature or one made without authority is inoperative. It conveys no right to the certificate or the shares it represents. Even if the transfer has been made upon an assignment of the shares to which the signature has been forged the new certificate does not replace the old one.

**Effect of transfer on forged signature.**

63. Cleveland, etec., R. R. Co. vs. Robbins, 35 O. S. 483.  
Brisbane vs. Delaw, etc., R. R. Co., 94 N. Y. 204.

The corporation is obliged to know the genuineness of the signature of its stockholders and if it is not certain that the signature presented is genuine it has the right to require the person applying for transfer to produce satisfactory proof that the signature is what it purports to be.<sup>64</sup>

If, notwithstanding this adequate means of protecting itself, the corporation permits a registry upon a forged transfer it not only does not deprive the real owner of his shares but it cannot cancel the registration of the new certificate if it has passed into the possession of a transferee who took it mediately or immediately, without notice, in good faith and for value, from the holder who procured its transfer. In that situation the owner of the shares may require the corporation to replace those transferred upon his forged signature, even requiring that it enter the market, if necessary, and buy others if the original shares cannot be restored.<sup>65</sup> He usually prays for alternative relief in damages, however, and it is damages, as a rule, that the corporation is required to pay.

For a general understanding of the incidents of stock ownership and transfer the explanations I have given of the law will usually suffice for ordinary necessities. This subject, like those which precede it, has been treated for the benefit of persons who are interested in obtaining a salutary knowledge of the important provisions of the law upon these business instruments, and I hope the book will enable many to free themselves from uneasy doubts upon the certainty and safety of their possession

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64. *Telegraph Co. vs. Davenport*, 97 U. S. 369.

65. *Machinists Nat. Bank vs. Field*, 126 Mass. 345.  
*Pratt vs. Boston, etc., R. R. Co.*, 126 Mass. 443.  
*Pratt vs. Machinists Nat. Bk.*, 123 Mass. 110.  
*Boston, etc., R. R. Co. vs. Richardsdon*, 135 Mass. 473.

and titles to the business paper and securities which they hold.

Now, in conclusion, the writer expresses the hope that this volume will be of use to business men, and to young men getting a business education. Whatever may be the merit of the explanations which have been offered of these laws, particularly of the Uniform Negotiable Instruments Law, that Act may be regarded as the most remarkable statute ever enacted and it ought to be familiar to every man. The best legal talent was freely expended, gratuitously, in its preparation. It has been in force in some of the States for nearly twenty years. During that time suggestions for its amendment were made at more than one annual Conference of the Commissioner on Uniform State Laws, made up now of representatives of nearly all of the States, but the amendments proposed and freely discussed at these Conferences were not deemed desirable and were not made. The courts have very generally recognized its intention to make uniform the law upon its subject and, with few exceptions, whenever there has been conflict between its provisions and prior judicial interpretation of the common law they have not hesitated to interpret the Act without reference to the state of the law as it was before its enactment.

Most of the needs of the business man for legal advice upon his commercial paper and most of his doubts concerning his rights and duties upon such contracts can be readily answered by reference to the Act itself and technical skill is not now so much as formerly required of the lawyer in giving advice upon this subject since the law has been so admirably written. The subtleties of the many questions which will continue to arise to confound the business man, and the



lawyer as well, will not allow that any volume upon the subject can or will be written which will provide a ready answer for every difficulty it may become necessary to meet. But if the book is used for frequent reference to the law, with which every business man ought to make himself thoroughly familiar, his knowledge of what to do in order to prevent loss upon his commercial paper and of when and how to do it will suffice for most of his ordinary needs and dispense with much unsatisfactory conflict and litigation now so frequent from a lack of this knowledge. The brief analyses of the principles of the laws governing Bills of Lading, Warehouse Receipts and the transfer of Certificates of Stock are designed, likewise, to enable men who handle or deal in these instruments to better understand their nature and the principal provisions of the laws which govern their interpretation and the rights and liabilities of their parties.

## APPENDIX.

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WHEREIN WILL BE FOUND THE CHANGES IN THE LAW MADE  
BY SOME OF THE STATES.

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## ALABAMA.

Sec. 49. The words "*said holder*" are substituted for "*transferer*" at the end of the first sentence. At the end of the section these words are added: "*for the purpose of transferring title only.*"

Sec. 58. All of the last sentence between the words "*such*" and "*latter*" are omitted from the second sentence of this section.

## ARIZONA.

Sec. 85. The last sentence, beginning with the words, "*instruments falling due,*" is omitted from the Act.

Sec. 146. The last sentence relating to Saturday when not a holiday is omitted.

Sec. 195. The Act omits this section.

## ARKANSAS.

Sec. 98. In the last sentence the words, "*must be sent by mail,*" are substituted for "*may be sent.*"

## COLORADO.

Sec. 49. The Act adds these words to the first sentence, "*if omitted by mistake, accident or fraud.*"

Sec. 61. The Act omits the word "*subsequent*" before "*indorser*" near the end of the first sentence.

Sec. 85. The third sentence, beginning "*instruments*

*falling due*” is omitted from the Act in this State and this substituted: “*instruments falling due on any day, in any place where any part of such day is a holiday, are to be presented for payment on the next succeeding business day, except that such instruments payable on demand may, at the option of the holder, be presented for payment during reasonable hours of the part of such day which is not a holiday.*”

Sec. 146. The last sentence is omitted and this substituted: “*When any day is in part a holiday presentment for acceptance may be made during reasonable hours of the part of such day which is not a holiday.*”

#### DELAWARE.

Sec. 85. The words “*or becoming payable*” are inserted in parentheses near the beginning of the third sentence after the words “*instruments falling due.*”

#### IDAHO.

Sec. 2. In Sub-section 3 the words “*or of interest*” are omitted.

#### ILLINOIS.

Sec. 5. The Act adds “*under this Act*” after the last word of the first sentence; it also omits all of Sub-section 2 following the word “*judgment.*”

Sec. 6. At the beginning of Sub-section 5 before the word “*designates*” these are added: “*Is payable in currency or current funds: or*” and it omits the last paragraph.

Sec. 8. The Act adds the following as additional Sub-section: “*7. An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate.*”

Sec. 9. Sub-sections 3 and 5 are omitted and these

substituted: "3. *When it is payable to the order of a person known by the drawer or maker to be fictitious or non-existent, or of a living person not intended to have any interest in it.*" "5. *When, although originally payable to order, it is indorsed in blank by the payee or a subsequent indorsee.*"

Sec. 14. The Act inserts these words, "*issued or,*" between the words "*is*" and "*negotiated*" near the beginning of the last sentence of this section.

Sec. 23. The Act omits the words "*of the person whose signature it purports to be*" near the beginning of the first sentence.

Sec. 25. The last sentence has been changed to read as follows: "*An antecedent or pre-existing claim, whether for money or not, constitutes value where an instrument is taken either in satisfaction therefor or as security therefor, and is deemed such, whether the instrument is payable on demand or at a future time.*"

Sec. 29. The words "*without receiving value therefor*" are omitted from the first sentence; at the end of the section these are added, "*and in case a transfer after maturity was intended by the accommodating party notwithstanding such holder acquired title after maturity.*"

Sec. 31. These words are added: "*And the addition of words of assignment or guaranty shall not negative the additional effect of the signature as an indorsement, unless otherwise expressly stated.*"

Sec. 37. The Act adds to Sub-section 2, "*or except in the case of a restrictive indorsement specified in Section 36, Sub-section 2, any action against the indorser or any prior party that a special indorsee would be entitled to bring.*" It also substitutes for the words "*his rights as such an indorsee*" in Sub-section 3 the words "*the instrument*" and at the end of the last paragraph adds the fol-



lowing: "*Specified in Section 36, Sub-section 1, and as against the principal or cestui qui trust only the title of the first indorsee under the restrictive indorsement specified in Section 36, Sub-sections 2 and 3, respectively.*"

Sec. 40. The words, "*payable to bearer,*" are omitted and these substituted: "*originally payable to or indorsed specially to bearer.*"

Sec. 49. The last seven words of the first sentence following the word "*right*" are omitted and these substituted, "*to enforce the instrument against one who signed for the accommodation of his transferer, and the right to have the indorsement of the transferer, if omitted by accident or mistake.*"

Sec. 57. The Act inserts after the word "*themselves*" a reference to a statute making certain defenses real defenses.

Sec. 58. In this section the Act inserts the word "*duress*" after "*fraud*" near the end of the section and for the last two words, "*the latter,*" substitutes "*such holder.*"

Sec. 61. The Act omits the word "*subsequent*" before "*indorser*" near the end of the first sentence.

Sec. 64. Sub-sections 1 and 2 are omitted and these substituted: "*1—If the instrument is a note or bill payable to the order of a third person, or an accepted bill, payable to the order of the drawer, he is liable to the payee and all subsequent parties.*" "*2—If the instrument is a note or unaccepted bill payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.*"

Sec. 66. The Act inserts after "*indorser*" at the beginning of the section the words, "*not an accommodating party.*" It also inserts "*and four*" after the word "*three*" in Sub-section 1 and substitutes, "*every in-*

dorser" for "he" near the beginning of the last sentence after the words "*in addition.*"

Sec. 68. The last sentence of this section is omitted and the following substituted: "*All parties jointly liable on a negotiable instrument are deemed to be jointly and severally liable.*"

Sec. 69. The following is added to this section: "*Sec. 69a. Whenever any bill of exchange drawn or indorsed within this State and payable without this State is duly protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon and on bills payable without the United States with or without suit, five per cent damages in addition.*"

Sec. 70. The section adds the words "*except in the case of bank notes*" after the word "*instrument*" where it is first used in the first sentence.

Sec. 80. The Act omits all following the words, "*for his accommodation.*"

Sec. 87. This section is omitted from the Act in this State.

Sec. 119. Sub-section 4 is omitted from the Act in this State.

Sec. 120. The Act omits Sub-section 3 and Sub-section 4 of the Act is given as Sub-section 3.

Sub-section 5 then becomes Sub-section 4 in this State and contains these additional words: "*or unless the principal debtor be an accommodating party.*"

Sub-section 6 is numbered 5 in this State and changed

in the following manner: The second word "*any*" is changed to "*an*" and after "*agreement*" the words "*in favor of the principal debtor*" are inserted. Between the words "*assent*" and "*of*," which occur at about the middle of the sub-section, the words "*prior or subsequent*" are inserted and at the end these words are added: "*Or unless the principal debtor be an accommodating party.*"

Sec. 124. The words, "*fraudulently or*," are inserted before "*materially*" where it first occurs, near the beginning of the first sentence and after the word "*altered*" which follows it, the Act inserts "*by the holder.*"

Sec. 134. The words "*to whom it is shown and*" toward the end of the section are omitted.

Sec. 135. The words "*or after*" are inserted between the words "*before*" and "*it is.*"

Sec. 137. This section is omitted from the Act.

Sec. 186. The Act inserts the following after the words "*its issue*": "*and notice of dishonor given to the drawer as provided for in the case of bills of exchange.*"

#### IOWA.

Sec. 2. In Sub-section 3 the words "*or of interest*" are omitted.

Sec. 85. The following has been added to this section: "*A demand made on any one of the three days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this Act, and the provisions of this Act, as to notice of non-payment, non-acceptance and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this Act; but the provisions of this section shall not be*

*construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face."*

## KANSAS.

Sec. 16. The Act omits the third sentence of this section.

Sec. 70. Near the end of the first sentence after the word "*maturity*" the statute inserts these words, "*and has funds there available for that purpose.*"

Sec. 85. The words "*or becoming payable*" are inserted near the beginning of the third sentence, after the words "*instruments falling due.*"

Sec. 192. The last sentence is omitted from the Act in this State.

## KENTUCKY.

Sec. 5. The Act omits Sub-section 3.

Sec. 19. This section is omitted and the following substituted: "*19. The signature of any party may be made by an agent duly authorized in writing.*"

Sec. 48. The word "*owner*" is substituted for "*holder*" in the first sentence.

Sec. 85. The third sentence beginning with the words "*instruments falling due*" is omitted.

Sec. 95. The Act substitutes the word "*must*" for "*need not*" near the beginning of the first sentence and substitutes "*written*" for "*verbal*" at the end of that sentence.

Sec. 96. The words "*merely oral*" are omitted from this section.

Sec. 146. The last sentence, relating to Saturday when not a holiday, is omitted.

Sec. 196. The Act omits this section.



## MARYLAND.

Sec. 120. The Act omits from Sub-section 6 the words "*unless made with the assent of the party secondarily liable.*"

## MASSACHUSETTS.

Sec. 85. The Act, on the subject of grace, contains this provision: "*On all drafts and bills of exchange made payable within this commonwealth at sight, three days of grace shall be allowed, unless there is an express stipulation therefor to the contrary.*" After the words "*falling due*" near the beginning of the sentence the words "*or payable*" are inserted, and the following provision is added at the end of the section: "*Provided also, that the same shall be duly presented for payment or acceptance or collection on the next succeeding business day.*"

## MINNESOTA.

Sec. 87. The word "*not*" has been inserted between the word "*is*" and "*equivalent*" and the provision of this section thus completely negated.

## MISSISSIPPI.

Sec. 49. The last seven words of the first sentence, following the word "*right*" are omitted and these substituted: "*To enforce the instrument against one who signed for the accommodation of transferer, and the right to have the indorsement of the transferer if omitted by accident or mistake.*"

## MISSOURI.

Sec. 49. In the first sentence, the last seven words following the word "*right*" are omitted and these substituted: "*To enforce the instrument against one who*

*signed for the accommodation of his transferer, and the right to have the indorsement of the transferer, if omitted by accident or mistake."*

Sec. 62. The word "*then*" before "*capacity*" in sub-section 2 is omitted.

Sec. 85. The words "*or becoming payable*" are inserted near the beginning of the third sentence after the words "*instruments falling due.*"

Sec. 87. The following words have been added at the end of this section: "*But where the instrument is made payable at a fixed or determinable future time, the order to the bank is limited to the day of maturity only.*"

Sec. 120. The Act adds to Sub-section 3 the words "*except when such discharge is had in bankruptcy proceedings.*"

#### NEBRASKA.

Sec. 2. The Act adds after Sub-section 5: "*Provided that nothing herein shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not allowable in other cases.*"

Sec. 71. All of this section after the words "*within a reasonable time after its issue*" is omitted from the Act.

Sec. 75. The Act omits all of the section following the words "*during banking hours.*"

Sec. 87. This section is omitted from the Act in this state.

#### NEW HAMPSHIRE.

Sec. 71. The Act adds the following provision defining a reasonable delay: "*Upon a promissory note payable on demand, a demand made at the expiration of sixty*

*days from the date thereof, without grace, or at any time within that term shall be deemed to be made at a reasonable time; and any act, neglect or other thing which by the provisions of this Act is deemed equivalent to a presentment and demand on a note payable at a fixed time or which would dispense with such presentment and demand, if it occurs at or within the sixty days shall be a dishonor thereof, and shall authorize the holder of the note to give notice of the dishonor to the indorser as upon presentment to the promisor, and his neglect or refusal to pay the same. No presentment of the note to the promisor and demand for payment shall charge the indorser unless made on or before the last day of the sixty days."*

Sec. 85. The Act contains this additional provision: "*On all drafts and bills of exchange made payable within this commonwealth at sight, three days of grace shall be allowed, unless there is an express stipulation therefor to the contrary.*" The words "*or payable*" are inserted after the words "*instruments falling due*" which begin the third sentence.

#### NEW YORK.

Sec. 70. The statute inserts the words "*and has funds there available for that purpose*" near the end of the first sentence between the words "*maturity*" and "*such.*"

Sec. 85. The words "*or becoming payable*" are inserted near the beginning of the third sentence after the words "*instruments falling due.*"

Sec. 120. The act omits from Sub-section 6 the words "*unless made with the assent of the party secondarily liable, or*".

## NORTH CAROLINA.

Sec. 2. In Sub-section 3 the words "*or of interest*" are omitted and the following is added at the end of the section: "*Nothing in this chapter shall authorize the enforcement of an authorization to confess judgment or a waiver of homestead and personal property exemptions or a provision to pay counsel fees for collection incorporated in any of the instruments mentioned in this chapter: but the mention of each provision in such instruments shall not affect the other terms of such instruments or the negotiability thereof.*"

Sec. 5. Sub-section 2 is affected and qualified, by the change in Section 2 given above.

Sec. 16. The words "*accepting or*" in the second sentence are omitted.

Sec. 17. Sub-section 2 is omitted.

Sec. 22. The words "*or married woman*" are inserted after the word "*infant*" in this section.

Sec. 85. Upon the subject of days of grace, the Act provides an exception as follows: "*All bills of exchange payable within the state, at sight, in which there is an express stipulation to that effect, and not otherwise, shall be entitled to days of grace as the same are allowed by the customs of merchants in foreign bills of exchange, payable at the expiration of a certain period after date or sight; provided, that no days of grace shall be allowed on any bill of exchange, promissory note or draft payable on demand.*"

Sec. 194. The section is omitted in this state.

## OHIO.

Sec. 70. The Act inserts the words "*and has funds there available for that purpose*" near the end of the



first sentence between the words "*maturity*" and "*such.*"

#### PENNSYLVANIA.

Sec. 137. By amendment the following has been added to this section: "*Provided, that the mere retention of such bill by the drawee, unless its return has been demanded, will not amount to an acceptance; and provided further that the provisions of this section shall not apply to checks.*"

#### RHODE ISLAND.

Sec. 85. The words "*except sight drafts*" are added after the words "*every negotiable instrument*" in the first sentence.

Sec. 103. In Sub-section 2 the last nine words are omitted and these substituted: "*ten o'clock in the evening of the day following*".

#### SOUTH DAKOTA.

Sec. 2. The following provision is substituted for Sub-section 5. "*Provided that nothing herein contained shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not now taxable by law.*"

Sec. 14. The section is omitted from the Act and the following substituted: "Sec. 14. *One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly blank, for the purpose of filling afterwards, is liable upon the instrument to an indorser thereof in due course, in whatever manner and at whatever time it may be filled so long as it remains negotiable in form.*"

Sec. 16. The sentence beginning with the word "*but*"

and ending with the word "*presumed*" has been omitted and the following substituted: "*An indorsee of a negotiable instrument in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.*"

Sec. 42. The words "*the indorsement of*" before the words "*the bank*" near the end of the section, are omitted.

Sec. 71. See under Sec. 193 below.

Sec. 87. The section is omitted.

Sec. 124. The words "*by the holder*" are inserted after the words "*materially altered*" in the first sentence of this section.

Sec. 134. The words, "*to whom it is shown*" are omitted from the section as enacted in this state.

Sec. 137. This section is omitted.

Sec. 193. The act contains the following additional sections upon this subject:

"Sec. 192A. *The apparent maturity of a bill of exchange payable on sight, or on demand, is:*

1. *If it bears interest, one year after its date;*  
*or,*
2. *If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.*

Sec. 192B. *The apparent maturity of a promissory note, payable at sight, or on demand, is:*

1. *If it bears interest, one year after its date;*  
*or,*
2. *If it does not bear interest, six months after its date."*

## VERMONT.

Sec. 71. The words *“its issue in order to charge the Drawer”* are substituted for *“the last negotiation thereof”* at the end of the section.

Sec. 118. The following provision has been added to this section: *“But this provision shall not be held to dispense with demand and notice of dishonor as provided by sections 71 and 90.”*

## VIRGINIA.

Sec. 20. After the word *“capacity”* in this section the act inserts the words *“without disclosing his principal.”*

## WISCONSIN.

Sec. 1. The Act adds after sub-section 5 *“but no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by any officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable shall be, or shall be deemed to be, negotiable according to the custom of merchants in whatever form they may be drawn or made. Warehouse receipts, bills of lading and railroad receipts upon the face of which the words ‘not negotiable’ shall not be plainly written, printed or stamped, shall be negotiable as provided in Sections 1676 of the Wisconsin Statutes of 1878, and in Sections 4194 and 4425 of these statutes, as the same have been construed by the supreme court.”*

Sec. 4. The last paragraph is omitted and this substituted: *“4—At a fixed period after the date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and*

*the happening of the event does not cure the defect except as herein provided."*

Sec. 5. The Act adds after the last word, "*illegal*," these, "*or authorize the waiver of exemptions from execution.*"

Sec. 10. The Act adds to this section "*memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument and parol evidence is admissible to show the circumstances under which they were made.*"

Sec. 14. The Act inserts the words "*prior to negotiation*" before the words "*by filling*" near the end of the first sentence. The words "*a prima facie*" near the end of the second sentence are omitted and it reads "*operates as an authority.*"

Section 17. An additional sub-section is added as follows: "*8—Where several writings are executed at about the same time, as parts of the same transactions, intended to accomplish the same object they may be construed as one and the same instrument as to all parties having notice thereof.*"

Sec. 25. After the word "*debt*" in the second sentence these words are inserted "*discharged extinguished or extended*" and these are added to the section; "*But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery by the maker, does not constitute value.*"

Sec. 41. The Act inserts the word "*joint*" before the word *indorsees*."

Sec. 49. This sentence is added to the section "*when the indorsement was omitted by mistake, or there was an*



*agreement to indorse made at the time of the transfer, the indorsement, when made relates back to the time of the transfer."*

Sec. 52. Another sub-section is added, as follows:  
*"5—That he took it in the usual course of business."*

Sec. 55. That Act adds the following to this section:  
*"And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care."*

Sec. 57. The following is added to this section: *"Except as provided in Sections 1944 and 1945 of these statutes, relating to insurance premiums; and also on cases where the title of the person negotiating such instrument is void under the provisions of Sec. 55 of this Act."*

Sec. 58. In this section the Act inserts the word *"duress"* after *"fraud"* near the end of the section and for the last two words *"the latter"* substitutes *"such holder."*

Sec. 70. All of the first sentence after the words *"on the instrument"* is omitted from the Act.

Sec. 85. The Act omits the last sentence beginning with the words *"instruments falling due."*

Sec. 117. The Act adds this provision: *"But this shall not be construed to revive any liability discharged by such omission."*

Sec. 120. A new sub-section is added, as follows:  
*"4a. By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes."*

Where the word *"assent"* occurs at about the middle

of Sub-section 6 the Act inserts, immediately following it, the words "*prior or subsequent*" and at the end of this sub-section adds "*or unless he is fully indemnified.*"

Sec. 124. Where the word "*assented*" occurs near the end of the first sentence it is followed by the words "*orally or in writing*" which the Act inserts there.

Sec. 128. The Act omits the last three words "*or in succession.*"

Sec. 130. The words "*or person*" which precede the words "*not capacity*" are omitted.

Sec. 137. The Act adds: "*Mere retention of the bill is not acceptance.*"

Sec. 146. The last sentence, relating to *Saturday* when not a holiday, is omitted.

Sec. 183. The Act contains two additional sections here, as follows: "*Sec. 1682. Whenever any bill of exchange drawn or indorsed within this State and payable without the limits of the United States shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent upon the contents thereof, together with interest on the said contents to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses. Sec. 1683. If any bill of exchange drawn upon any person or corporation out of this State, but within some State or Territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment shall pay said bill with legal interest according to*

*its tenor and five per cent damages, together with costs and charges of protest."*

WYOMING.

Sec. 2. The words "*or of interest*" in sub-section 3 are omitted.

Sec. 18. The word "*expressly*" in the first sentence is omitted.

Sec. 34. The word "*made*" is inserted between the words "*to be*" and "*payable*" in the first clause of the first sentence of this section.

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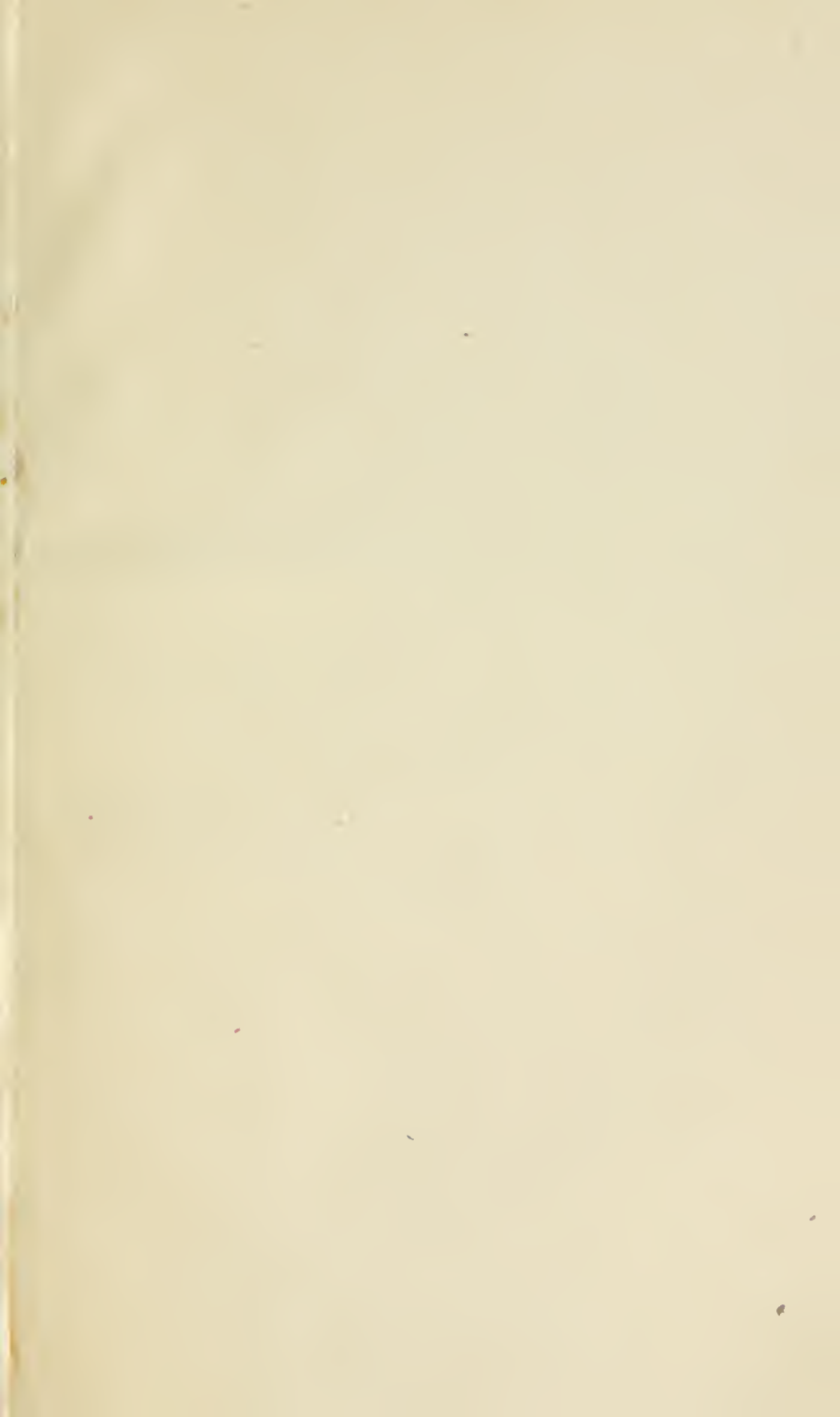
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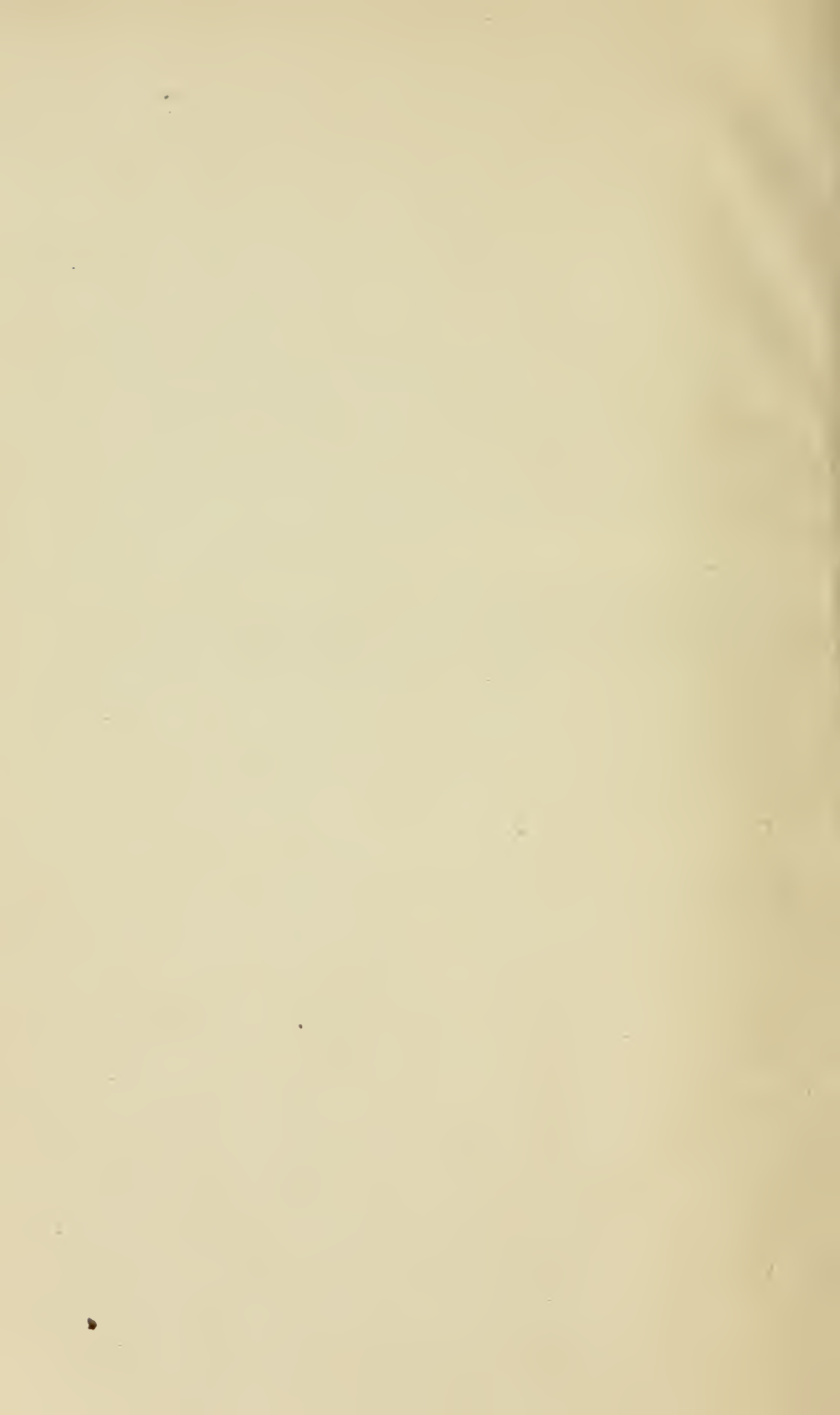
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